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Briefing on How To Use the Federal Register
For information on a briefing in New Orleans, LA, see announcement on the inside cover of this issue.

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NEW ORLEANS, LA

WHEN: July 23, at 9:00 am
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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Executive Order 12769 of July 10, 1991

Implementation of Section 311(a) of the Comprehensive Anti-Apartheid Act

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Comprehensive Anti-Apartheid Act of 1986 (Public Law 99–440), as amended ("the Act"), and section 301 of title 3 of the United States Code, and having concluded that the Government of South Africa has taken all of the steps specified in section 311(a) of the Act, and, therefore, that title III and sections 501(c) and 504(b) of the Act have terminated, it is hereby ordered as follows:

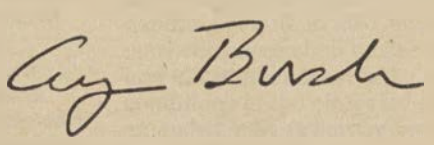
Section 1. *Implementation of Section 311(a) of the Act.* All affected executive departments and agencies shall immediately take all steps necessary, consistent with the Constitution, to implement the termination of those sanctions which were imposed by title III and sections 501(c) and 504(b) of the Act.

Sec. 2. *Status of Prior Executive Order.* Except as superseded by section 1 of this order, Executive Order No. 12571 of October 27, 1986, "Implementation of the Comprehensive Anti-Apartheid Act," shall remain in effect. Pursuant to this order, the Inter-Agency Coordinating Committee established by section 12 of that order shall monitor the termination of those sanctions which were imposed by title III and sections 501(c) and 504(b) of the Act.

Sec. 3. *Actions Taken and Proceedings Pending.* This order shall not affect any action taken or proceeding pending and not finally concluded or determined on the effective date of this order, or any action or proceeding based on any act committed prior to the effective date of this order, or any rights and duties that matured or penalties that were incurred prior to the effective date of this order.

Sec. 4. *Revocation.* Executive Order No. 12532 of September 9, 1985, and Executive Order No. 12535 of October 1, 1985, which lapsed on September 9, 1987, pursuant to the provisions of sections 1622(d) and 1701 of title 50 of the United States Code are hereby revoked.

Sec. 5. *Effective Date.* This order shall be effective immediately.



THE WHITE HOUSE,
7–10–91.

[FR Doc 91–16801
Filed 7–10–91; 2:54 pm]
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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1005

[Docket No. AO-388-A4; DA-91-005, DA-90-032]

Milk in the Carolina Marketing Area; Order Amending Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the Carolina Federal milk marketing order. As amended, the order allows a handler that operates more than one distributing plant to combine the receipts and dispositions of such plants for the purpose of qualifying them as pool plants. The action is based on a proposal by a cooperative association and a dairy processor considered at a public hearing held November 8, 1990. The changes are necessary to provide more efficient procedures for handling milk, to reflect current marketing conditions and to assure orderly marketing in the Carolina area.

EFFECTIVE DATE: August 1, 1991.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Chief, Order Formulation Branch, USDA/AMS/Dairy Division, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-6274.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued October 24, 1990; published October 30, 1990 (55 FR 45682).

Recommended Decision: Issued March 1, 1991; published March 6, 1991 (56 FR 9306).

Final Decision: Issued May 22, 1991; published June 4, 1991 (56 FR 25375).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Carolina order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Carolina marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) Additional findings. It is necessary in the public interest to make this order amending the order effective not later than August 1, 1991. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of this order are known to handlers. The recommended decision of the Administrator, was issued March 1, 1991 (56 FR 9306), and the decision of the Assistant Secretary containing all amendment provisions of this order was issued May 22, 1991 (56 FR 25375). The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective August 1, 1991, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the Federal Register. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551-559).

(c) Determinations. It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1005

Milk marketing orders.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Carolina marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

PART 1005—MILK IN THE CAROLINA MARKETING AREA

1. The authority citation for 7 CFR part 1005 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. In § 1005.7, paragraph (a)(2) is revised to read as follows:

§ 1005.7 Pool plant.

* * * * *

(a) * * *

(2) The total quantity of fluid milk products, except filled milk, disposed of in class I is not less than 60 percent in each of the months of August through November and January and February, and 40 percent in each of the other months, of the total quantity of fluid milk products, except filled milk, physically received at such plant or diverted therefrom pursuant to § 1005.13, subject to the following conditions:

(i) Two or more plants operated by the same handler may be considered as a unit for the purpose of meeting the total Class I requirement percentages specified in paragraph (a)(2) of this section if each plant in the unit meets the in-area route disposition requirement specified in paragraph (a)(1) of this section, and if such handler requests that the plants be so considered as a unit. If such a handler wishes to add or remove plants from consideration as a unit, such a request must be made before the first day of the month for which it is to be effective.

(ii) The applicable percentages in paragraph (a)(2) of this section may be increased or decreased up to 10 percentage points by the Director of the Dairy Division if the Director finds such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the Director shall investigate the need for revision either at the Director's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that the revision is being considered and invite written data, views, and arguments.

* * * * *

Effective Date: August 1, 1991.

Signed at Washington, DC, on: July 5, 1991

Jo Ann R. Smith,

Assistant Secretary Marketing and Inspection Services.

[FR Doc. 91–16659 Filed 7–11–91; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 90–147]

Importation of Ostriches and Other Ratites

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the animal import regulations to allow flightless birds known as ratites (cassowaries, emus, kiwis, ostriches, and rheas), and hatching eggs of ratites, to be imported into the United States. Except with respect to certain ostrich chicks, the importation of ratites has been prohibited since August 15, 1989, to prevent the introduction and dissemination of ectoparasites that could spread heartwater and East Coast fever, exotic and highly morbid diseases of livestock. This rule will allow the importation of ratites to resume under conditions intended to prevent the introduction of communicable diseases that may be transmitted to livestock and poultry by ectoparasites and other agents. This rule also will allow the importation of hatching eggs of ratites under conditions intended to prevent the introduction of communicable diseases of poultry. In addition, this rule will prohibit ratites from transiting the United States from one foreign country to another, because of the significant risk that disease-causing ectoparasites would be introduced during the in-transit movements.

EFFECTIVE DATE: August 12, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. Keith Hand, Senior Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, room 766, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 (301) 436–8590).

SUPPLEMENTARY INFORMATION:

Background

In a proposed rule published in the **Federal Register** on May 30, 1990 (55 FR 21879–21883, Docket 89–210), we proposed to amend the regulations in 9 CFR part 92 by allowing flightless birds known as ratites, and hatching eggs of captive-bred ratites, to be imported into the United States. The proposed rule contained various restrictions on the importations to prevent the introduction and dissemination of communicable diseases of livestock and poultry.

Comments on the proposed rule were required to be received on or before June 29, 1990. We received 2,068 comments by this closing date. Most of the comments, both for and against the proposed rule, did not address specific issues, or did not provide information to support commenter's views. Comments that contained specific suggestions or criticisms are discussed below.

It should be noted that, after the publication of the proposed rule concerning imported ratites, a final rule was published that reorganized all of 9 CFR part 92 (see 55 FR 31484–31562, Docket No. 90–023, August 2, 1990). The section of part 92 that we proposed to amend were §§ 92.1, 92.2, 92.5, 92.8, and 92.11. For birds, including ratites, those sections correspond to current §§ 92.100, 92.101, 92.104, 92.105, and 91.106.

A summary of the changes we are making in response to comments precedes the discussion of comments. Except for the changes described in this Supplementary Information section, we are adopting the proposed rule as a final rule for the reasons given in this document and in the proposed rule.

Summary of Changes Made in Final Rule

1. Except for ratites intended for importation as zoological birds, all ratites and ratite hatching eggs imported into the United States must have been produced by a pen-raised flock and, in the case of ratites, maintained in a pen-raised flock. Pen-raised is defined as "cared for in a fenced enclosure, such that the ratites are kept apart from wild ratites, poultry, and other animals; and can be readily observed and, when necessary, restrained for inspection and treatment." (The proposal did not explicitly address the importation of wild-caught ratites; it did require that hatching eggs be from "captive-bred" ratites, but "captive-bred" was not defined.)

2. Except for ratites intended for importation as zoological birds, a permit to import ratites or hatching eggs of ratites will be denied or withdrawn unless an APHIS representative has visited the premises where the flock of origin is kept within the 12-month period before the intended importation and has determined that the flock is pen-raised and contains sufficient breeding pairs to produce the number of ratites or hatching eggs intended for importation. (This requirement was not included in the proposal.)

3. A permit to import ratites or hatching eggs of ratites will be denied or withdrawn unless APHIS representatives are granted access to the premises where the flock of origin is kept (or, in the case of zoological birds, to the premises where the birds are kept), from the date of application for the permit through the date of export. The application for permit must contain a statement that APHIS representatives shall be granted this access. (These requirements were not included in the proposal.)

4. The Administrator may exempt ostriches intended for importation as zoological birds from the height and weight restrictions otherwise applicable to imported ostriches (maximum height of 36 inches; maximum weight of 30

pounds). (The proposal did not provide for any exemptions from height and weight restrictions for ostriches.)

5. Except for zoological birds, health certification must be based on inspection of the entire flock of origin, and not just the ratites intended for importation from the flock. (The proposal specified only the ratites covered by the certificate.

6. Ratites and hatching eggs must be placed in unused containers at the premises where the flock of origin is kept. (The proposal required that ratites and hatching eggs be placed in unused containers at the premises from which they were to be exported.)

7. Ratites and hatching eggs of ratites may not be imported into the United States in any container that holds hay, straw, grasses, wood chips, sawdust, or other materials likely to harbor ectoparasites. Ratites and hatching eggs of ratites that are imported into the United States in containers holding such materials will be refused entry. (The proposal contained no restrictions on packing materials.)

8. Ratites to be quarantined at the New York Animal Import Center (NYAIC) may arrive in the United States at either the Port of New York, NY, or at Stewart Airport, Newburgh, NY. (Proposal allowed only New York, NY.)

9. Ratites other than ostriches may arrive in the United States at the Port of Honolulu, HI, and be quarantined at the APHIS quarantine facility in Honolulu. (Proposal allowed only New York and NYAIC.)

10. All ratites, including chicks hatched during quarantine, will be tested for viral diseases of poultry during quarantine. If any ratites, including chicks hatched during quarantine, exhibit evidence of any other communicable disease during quarantine, they will be subjected to such additional tests as the Administrator may require to determine their freedom from communicable diseases. (The proposal did not make clear that chicks hatched during quarantine would be tested for viral diseases of poultry. The proposal also did not provide that ratites, including chicks hatched during quarantine, would be subject to other tests if any of the birds exhibit evidence of other communicable diseases during quarantine.)

11. Hatching eggs shall be quarantined upon arrival, incubated for the full incubation period (approximately 42 days), and held for at least 30 days after the last chick in the lot has hatched. (The proposal required quarantine upon arrival in the United States, but did not specify that the eggs must be quarantined for the full incubation period and for at least 30 days after the last chick hatches.)

12. Hatching eggs of ratites shall be quarantined only at a quarantine facility approved by the Administrator in accordance with current § 92.106(b) [redesignated as § 92.106(c) in this final rule]. (These are privately operated facilities that have been approved by APHIS. The proposal provided for quarantine at either APHIS or approved private facilities.)

13. The final rule states that APHIS will treat ratites for ectoparasites during quarantine in the United States with a dust formulation containing 5 percent carbaryl as the only active ingredient. The Environmental Protection Agency has granted temporary approval for APHIS to use this pesticide on ratites during quarantine. The approval expires December 24, 1993. Under the terms of this approval, treated birds may not be slaughtered for food.

Comments

Wild vs. Pen-Raised

Our proposal required that hatching eggs of ratites be from captive-bred ratites [proposed § 92.2(b)(1)]; however, the proposal did not specifically address the importation of wild-caught ratites.

Many commenters stated that our proposal did not contain adequate measures to ensure that imported ratites met the health requirements contained in our proposal. Generally, the commenters expressed concern that ratites would not come from managed, or domesticated flocks, but would be wild-caught birds that may have been exposed to communicable diseases and will not have a known health history. Many expressed particular concern that hatching eggs would be taken from the wild, and would not be the progeny of "captive-bred" ratites, as stipulated in the proposal. One commenter, noting that the proposal did not define "captive-bred," stated: "This (term) may conjure pictures of a small paddock with birds receiving constant attention, but it belies the true state where large numbers of birds roam freely in 'pens' that may encompass 10,000 acres or more * * * birds are not to any extent domesticated or managed. * * * It is irresponsible to expect that these birds will be rigorously inspected and treated." Many commenters expressed a general lack of confidence in the integrity of the health certificate; several asserted that the health certificate for these imports should be issued by a veterinarian placed by the United States at the country of export.

Our proposed rule provided that the health certificate for ratites other than hatching eggs of ratites must state, among other things, that all birds covered by the certificate were inspected by the veterinarian issuing the certificate; that no evidence of communicable disease of poultry was found among the birds; that, insofar as could be determined, the birds had not been exposed to any communicable disease of poultry during the 90 days preceding their exportation; that Newcastle disease did not occur anywhere on the premises from which the birds were to be exported, or on adjoining premises, during the 90 days preceding the birds' exportation, and that these premises were not in any area under quarantine for poultry diseases during those 90 days. Our proposed health certification provisions concerning hatching eggs contained the same requirements, but applied to the flock of origin.

We have reviewed these provisions in light of the comments we received, and agree that wild-caught ratites and hatching eggs from wild flocks would present a greater disease risk than ratites and hatching eggs from "domesticated or managed" flocks. Further, we believe that this additional risk would present an unnecessary threat to domestic poultry and livestock with which the imported ratites might come in contact. Therefore, except for ratites imported as zoological birds, § 92.101(b)(3) of this final rule allows ratites and hatching eggs of ratites to be imported into the United States only if they were produced by a pen-raised flock, and, in the case of ratites, maintained in a pen-raised flock.

By "pen-raised" flock, we mean a flock that is cared for in a fenced enclosure, such that the birds are kept apart from wild ratites, poultry and other animals; can be readily observed, and, when necessary, restrained for inspection and treatment. This definition has been added to § 92.100 in this final rule. This requirement will ensure that the imported ratites and hatching eggs of ratites will be at least one generation removed from the wild.

To help ensure that ratites and hatching eggs of ratites intended for importation are from pen-raised flocks and meet other requirements for health certification, § 92.103(a)(2) of this final rule provides that:

—Except for ratites intended for importation as zoological birds, a permit to import ratites or hatching eggs of ratites will be denied or withdrawn unless an APHIS representative has visited the

premises where the flock of origin is kept within the 12-month period before the importation and has determined that the flock is pen-raised and contains sufficient breeding pairs to produce the number of ratites or hatching eggs intended for importation; and

—A permit to import ratites or hatching eggs of ratites will be denied or withdrawn unless APHIS representatives are granted access to the premises where the flock of origin is kept (or, in the case of zoological birds, to the premises where the birds are kept), from the date of application for the permit through the date of export.

These safeguards will provide assurance that the ratites or hatching eggs are from a pen-raised flock, whose health status can be determined.

Ratites imported as zoological birds are exempt from the pen-raised requirements in this final rule. "Zoological birds" are defined by the regulations at § 92.100 as "Birds intended for breeding or public display, for recreational or educational purposes, at a zoological park." "Zoological park" is defined in § 92.100 as "A professionally operated zoo, park, garden or other place, maintained under the constant surveillance of a Doctor of Veterinary Medicine, for the exhibition of live animals, pigeons or birds, for the purpose of public recreation or education."

Ratities intended for importation as zoological birds are not likely to be part of a pen-raised flock. They are most likely to come from another zoological park; they may be wild caught. If the ratites are being transferred from another zoological park, their flock of origin may consist of only themselves. If they are wild caught, the flock of origin will be free roaming, and its health status will be difficult, if not impossible, to determine.

Ratites that have been kept at a zoological park will have been in a controlled setting, and information about their contact with other animals, and about their health status in general, will normally be available. Less will be known about wild-caught ratites intended for importation as zoological birds. However, based on our experience, we expect that relatively few ratites will be imported as zoological birds, and that these will usually be imported singly or in pairs. All treatment and quarantine requirements will apply, and the ratites will be kept at a zoological park, where contact with domestic poultry and livestock is unlikely. Under these circumstances, we have determined that ratites imported as zoological birds will not present a significant risk of spreading communicable diseases, whether or not they are from a pen-raised flock. Therefore, under this final rule, ratites imported as zoological birds will not have to come from a pen-raised flock.

Further, health certification of ratites intended for importation as zoological birds will be based on inspection of the birds intended for importation, rather than inspection of the flock of origin. [See § 92.104(c) of this final rule.]

Applicant for Import Permit

Under our proposed rule, applications to import ratites or hatching eggs of ratites were required to contain no more information than the application to import any other commercial or zoological bird. Section 92.103(a)(1) of this final rule provides that the application for permit to import ratites or hatching eggs of ratites must, in addition, specify the number of ratites or hatching eggs intended for importation, the size of the flock of origin, and the location of the premises where the flock of origin is kept; and must state that, from the date of application through the date of export, APHIS representatives shall have access to the premises where the flock of origin is kept. (For ratites intended for importation as zoological birds, the flock of origin shall be the ratites intended for importation.) This information is needed in order for APHIS representatives to conduct the pre-export inspections discussed above.

Size Restrictions on Ostriches

Our proposal contained a prohibition on the importation of ostriches that exceeded either 36 inches in height or 30 pounds in weight [proposed § 92.2(b)(1)].

One commenter maintained that we should not place size restrictions on "ranch raised" ostriches because the birds are "docile" and can be easily handled for inspection and treatment. Another commenter stated that we should allow the importation of ostriches up to 60 inches tall. One commenter asked specifically that we allow an exception to the size restrictions on ostriches so that adult breeding stock can be imported for zoos.

The size and weight restrictions we proposed correspond to ostriches that are about 3 months old. It has been our experience that adult ostriches present a relatively high risk of having ectoparasites and other disease problems when compared to other ratites. Further, while some ranch-raised, or pen-raised, ostriches may be docile and easily handled, our experience indicates that ostriches do not always behave in this manner. We believe the proposed size restrictions are necessary in most cases to prevent the introduction of ectoparasites and communicable diseases by imported ostriches. Therefore, these size restrictions are retained in this final rule in § 92.101(b)(3).

However, § 92.101(b)(3) of this final rule also provides that the Administrator may exempt ostriches imported as zoological birds from the height and weight restrictions. An exemption will be granted if the Administrator determines that APHIS personnel and facilities are available to handle and treat the larger ostriches during quarantine in the United States, and that the treatment and quarantine procedures contained in this rule are sufficient to ensure that the birds will not present a significant risk of introducing communicable diseases that may be transmitted to livestock or poultry by ectoparasites or other agents. Factors that will be considered include, but are not limited to: The number of ostriches in the shipment, the length of time the birds have been in captivity, and the environment(s) in which the birds have existed.

One commenter recommended that the size restrictions on ostriches apply to the time of export and not the time of arrival in the United States. The restrictions on the size of ostriches are intended to ensure adequate handling and treatment of the birds during quarantine in the United States. In most cases, transportation will be by air, and chicks that meet the size requirements at the time of export will still meet them at the time of arrival in the United States. Without imposing limits on transportation time, however, APHIS has no way to ensure that this will be the case. Therefore, we have made no changes in the final rule in response to this comment.

One commenter said that although young ostriches might be easier to handle, they also might have a poor survival rate. Based on our experience at the NYAIC, chicks that are in good physical condition at the time of export and do not receive undue stress during shipment to the United States should not have a poor survival rate. Out of five shipments of ostrich chicks to the NYAIC, totaling 322 birds, only 19 chicks died before release from quarantine. A sixth shipment suffered a mortality rate of 50 percent, but the chicks had arrived in poor physical condition.

Disease Risk

A number of commenters maintained that we should not allow the importation of ratites or hatching eggs of ratites based on the assertion that they present a risk of introducing blood-borne diseases, infectious bacteria, viruses and rickettsiae, and endoparasites, as well as ectoparasites. One commenter claimed that considerable "infectious activity" already exists among domestic chicks, and cited "ostrich chick wasting syndrome" as an example. He expressed concern that "foreign infectious entities, unknown at present and thusly untestable, could be introduced." Other commenters also maintained that imported ratites and hatching eggs of ratites pose an "unknown" disease risks. A number of commenters expressed particular concern about the disease risk posed by hatching eggs since "you can't test eggs." The most frequently voiced objection was to importations of ostriches from Africa.

With respect to ostriches, in particular, we proposed to prohibit the importation of any that were more than 36 inches in height or 30 pounds in weight. As explained in the proposed rule, large ostriches are difficult to inspect and treat, and are more likely than young chicks to be infested with ectoparasites capable of transmitting communicable diseases of livestock and poultry. This restriction was intended to minimize the risk of ostriches introducing ectoparasites into the United States. It has also been our experience that internal parasites and diseases are associated primarily with adult ostriches. The proposed prohibition on the importation of ostriches over 36 inches in height or 30 pounds in weight is retained in this final rule, except that the Administrator may allow exemptions for ostriches imported as zoological birds. This prohibition, in itself, greatly reduces the risk that imported ratites will introduce internal or external parasites or any communicable disease.

Our proposal also included a number of other safeguards to prevent the introduction of communicable diseases by ratites and hatching eggs of ratites. With respect to ratites other than hatching eggs, these safeguards included pre-export inspection and health certification; treatment for ectoparasites before shipment to the United States; quarantine upon arrival, and for at least 30 days thereafter, at the U.S. Department of Agriculture's New York Animal Import Center (NYAIC) in Newburgh, NY; further treatment for ectoparasites during the quarantine period; and testing during the quarantine period for viral diseases of poultry, including Newcastle disease. The proposal further stated that ratites would not be released from quarantine for entry into the United States unless they were determined to be free of both ectoparasites and evidence of any communicable disease. With respect to hatching eggs of ratites, the proposed rule required inspection and health certification of the flock of origin, and required that the hatching eggs be from captive-bred ratites. The proposal did not require treatment of either the hatching eggs or the resulting chicks for ectoparasites, but all other proposed provisions applicable to ratites also applied to hatching eggs.

We continue to believe that these safeguards will prevent the introduction of communicable diseases by ratites and hatching eggs of ratites. We are making some changes, however, to clarify and strengthen these safeguards.

One of these changes is the requirement in this final rule that, except for zoological birds, all ratites and hatching eggs of ratites imported into the United States must have been produced by a pen-raised flock and, in the case of ratites, maintained in a pen-raised flock. As explained earlier, this requirement will provide additional confidence in the health certification of the ratites or hatching eggs, by ensuring they are from a flock whose health status can be determined. This final rule also requires that APHIS representatives be given access to the premises where the flock of origin, or the zoological birds, are kept, from the date of application for import permit through the date of export. Such access will allow APHIS to make spot checks to verify the health status of the ratites or the flocks producing hatching eggs intended for importation.

In addition, except for zoological birds, this final rule also requires that health certification of ratites be based on inspection and certification of the entire flock of origin, rather than just the ratites intended for importation. This will provide further assurance of the ratites' health, since evidence of communicable disease, or exposure to communicable disease, of any ratite in the flock would disqualify the ratites for importation into the United States.

Section 92.104 of this final rule also requires that the ratites or hatching eggs intended for importation be packed for shipment to the United States at the premises where the flock of origin or the zoological birds are kept, to reduce the risk of exposure to communicable disease at some other location.

In response to concerns that hatching eggs "cannot be tested," this final rule clarifies quarantine procedures for hatching eggs of ratites. Section 92.106 of this final rule provides that the hatching eggs must be quarantined upon arrival, incubated for the full incubation period (approximately 42 days), and held in quarantine for a minimum of 30 days after the last chick in the lot has hatched. The hatched chicks will be observed and tested for communicable disease in the same manner as other ratities. Some commenters were apparently concerned that the eggs would be released from quarantine before hatch. Requiring the eggs to be quarantined for the full incubation period will discourage the inclusion of any eggs harvested from the wild, since wild eggs would be at varying stages of incubation.

Section 92.106 of this final rule also clarifies testing procedures during quarantine by providing that, in addition to testing all ratites for viral diseases of poultry, other tests will be conducted if the ratites exhibit evidence of any communicable disease. As stated in § 92.11(e) of the proposal and § 92.106(b) of this final rule, ratites will not be released from quarantine for entry into the United States unless they are free of evidence of any communicable disease.

Concerning the comment about "infectious activity" among domestic chicks, and "ostrich chick wasting syndrome" in particular, there is no evidence that such "infectious activity" exists. Large numbers of dead chicks have been submitted for laboratory testing to Texas A&M University and Oklahoma State University, and no viral pathogens or significant bacterial pathogens have been detected. Additional tests at APHIS's National Veterinary Services Laboratories, in Ames, IA, support these results.

Some commenters asserted that ratites may carry communicable diseases that can infect humans, and one commenter asked that more research be done with regard to human health risks before a decision is made to allow the importation of ratites. With respect to any disease risk to humans from imported ratites, literature surveys do not support the argument that ratites pose a health risk to humans. Further, most ratites in the United States now are the progeny of ratites that were imported into the United States without restriction earlier in this century; we are not aware of any serious human health problems related to these ratites. As for specific concerns about the spread of heartwater and East Coast fever by ratites previously infested with ticks,

there is no evidence that, once the ticks are removed, the ratites serve as reservoirs for these diseases. Again, however, ratites will not be released from quarantine for entry into the United States unless they are free of both ectoparasites and evidence of any communicable disease.

Ratites, including those hatched during quarantine, that qualify for a permit, and that meet all of the requirements for health certification and release from quarantine in the United States, will present a minimal risk of introducing communicable diseases.

Treatment for Ectoparasites

Our proposed rule contained requirements that ratites be treated for ectoparasites both in the exporting country [proposed § 92.5(c)(2)] and during quarantine in the United States [proposed § 92.11(e)].

One commenter questioned whether there is an approved treatment to destroy ectoparasites on ratites. Another said that we should specify the type of pesticide to be used and state how it should be applied. Section 92.106(b) of this final rule specifies that a treatment approved by the Environmental Protection Agency will be used on the ratites during quarantine at APHIS facilities in the United States. At our request, the Environmental Protection Agency (EPA) has given temporary approval for APHIS to use 5 percent carbaryl as a treatment for ectoparasites on ratites. Any EPA-registered dust formulation containing 5 percent carbaryl as the only active ingredient may be used by APHIS in accordance with all applicable directions, restrictions, and precautions on the label. The EPA has specified that treated birds may not be slaughtered for food purposes. Approval of APHIS's use of this pesticide on ratites extends only through December 24, 1993.

Several commenters expressed concern that treating the ratites for ectoparasites in the exporting country might not kill all ectoparasites on the birds. We stated in the preamble of our proposed rule that this treatment should kill "most" ectoparasites on the birds. There is always a possibility that some ectoparasites might survive this treatment, or that the birds might become reinfested. That is why we are also requiring treatment of the birds for ectoparasites while the birds are in quarantine in the United States.

Two commenters maintained that treatment and inspection of ratites during quarantine would not provide adequate assurance that ratites released from quarantine would be free of ectoparasites. Section 92.106(b) of our final rule provides that the ratites shall be treated for ectoparasites by an inspector until the inspector determines that the ratites are free of ectoparasites. The birds will not be released from quarantine for entry into the United States unless they are free of ectoparasites. [These requirements were in proposed § 92.11(e).] Further, § 92.106(b) of this rule provides that ratites may be quarantined only at one of two U.S. Department of Agriculture quarantine stations in the United States, where inspectors have received specialized training in handling ratites and treating them for ectoparasites. Writing in support of the proposed rule, the American Veterinary Medical Association stated: "The proposed rule appears to include sufficient precautions to prevent the introduction and dissemination of ectoparasites on ratites imported into the United States."

A few commenters maintained that ratites other than ostriches should not have to be treated for ectoparasites. We disagree. Ratites other than ostriches must be treated for ectoparasites because ectoparasites capable of transmitting infectious disease are known to exist in most parts of the world, including areas where emus, cassowaries, kiwis, and rheas are found, and because there are records of ectoparasites being detected on all types of ratites except emus. Emus could harbor ticks exotic to the United States, however, and could bring the ticks into this country. Another commenter expressed concern that treating kiwis for ectoparasites 3 to 14 days before export to the United States would prove too stressful for the birds. We have consulted with zoological experts, who indicated that treatment for ectoparasites should not cause any special problems for kiwis. Therefore, we have made no changes in this final rule as a result of these comments.

Ports of Entry

Under § 92.8(b) and § 92.11(e) of our proposed rule, all ratites would have been required to arrive in the United States through the Port of New York, NY, for quarantine at the New York Animal Import Center (NYAIC).

A number of commenters maintained that we should not require entry at the Port of New York for ratites other than ostriches (a few said other than ostriches from Africa). They argued that the flight to New York would be very difficult for emus, cassowaries, and kiwis imported from distant areas of the world, such as Asia and Australia. One commenter stated that, prior to the ban on importing ratites, he had successfully brought ratites other than ostriches into the United States through the Hawaii import facility.

We proposed to require all ratites to come into the United States through the Port of New York for quarantine at the NYAIC because the NYAIC is the APHIS quarantine station best equipped with both facilities and personnel to handle ratites. We agree, however, that requiring all ratites to enter through New York for quarantine at NYAIC could create stressful travel conditions for ratites coming from places such as Asia, Australia, and other areas of the Pacific. We also do not anticipate that ratites other than ostriches and emus will be imported in large numbers. Therefore, to better accommodate importations from Asia, Australia, and other areas of the Pacific, § 92.105 of this final rule provides that ratites other than ostriches may be imported through the Port of Honolulu, HI, and quarantined at the APHIS quarantine facility in Honolulu. We will ensure that personnel assigned to handle the ratites at the Honolulu quarantine facility receive appropriate instruction and guidance.

One commenter stated that additional quarantine locations in the western United States should be allowed for Canadian birds. Another commenter suggested opening quarantine facilities in Miami, Houston, and San Diego to ratites to prevent the cost of quarantine and transportation from being prohibitive.

At this time, we do not have adequate facilities or sufficient personnel with experience in handling ratites to allow quarantine of ratites at the ports of Miami, Houston, San Diego, or any other location in the United States other than the NYAIC in Newburgh, NY, and the APHIS quarantine facility in Honolulu, HI. The addition of Honolulu will reduce transportation costs for emus, cassowaries, and kiwis that may be imported from Australia, Asia, and other locations in the Pacific.

Use of Private vs. APHIS Quarantine Facilities

Section 92.11(e) of our proposed rule provided that hatching eggs of ratites could be quarantined upon arrival in the United States either at the New York Animal Import Center (NYAIC) in Newburgh, NY, or at a privately operated quarantine facility approved by the Administrator.

Several commenters asserted that we should not allow use of privately operated quarantine facilities for the hatching eggs. Specific reasons given included concerns about dishonesty and lack of qualified personnel at these

facilities, especially facilities owned by the importer.

Privately operated quarantine facilities must be approved by the Administrator of APHIS in accordance with the regulations in current § 92.106(b) [redesignated as § 92.106(c) in this final rule] in order to handle imported birds. These regulations include requirements related to supervision, the location and construction of the facility, sanitation and security, personnel access, handling of birds during quarantine, and records. Further, the approval of any facility is contingent upon a determination by the Administrator that adequate APHIS personnel are available to provide required services. Approved quarantine facilities are maintained under the supervision of the APHIS port veterinarian.

The regulations provide for withdrawal of approval from any facility that does not comply with the requirements, and from any facility where the operator or other persons responsibly connected with the business are convicted of any crime under any law regarding the importation or quarantine of any animal or bird, or any crime involving fraud, bribery, extortion, or otherwise involving the integrity needed to conduct operations at the facility. We believe that these regulations will provide for appropriate supervision and enforcement of quarantine activities related to hatching eggs of ratites at privately operated facilities.

Several commenters questioned whether quarantine facilities and personnel would be prepared to handle hatching eggs or to care for young chicks after hatch. One commenter stated that the number of hatching eggs imported could be unmanageable. Another maintained that it is not the job of the U.S. Department of Agriculture to get into the incubation and chick-rearing business and suggested that this job could be delegated to one of the large import breeder ostrich ranches. Another commenter said that it did not appear that adequate consideration had been given to quarantine incubation facilities, and recommended that specialized personnel be present at the quarantine station because incubation, hatching, and initial raising of ratites require specialized training and experience.

After reviewing the comments and further considering what APHIS' role should be with respect to quarantine of ratite hatching eggs, we have determined that quarantine of these hatching eggs should not be undertaken at the NYAIC. We have neither the equipment nor the personnel to handle the quarantine of these hatching eggs at the NYAIC, and budget constraints and space limitations preclude purchase of incubation and related equipment at this time. We believe that responsibility for incubation, hatching, and care of newly hatched ratites during quarantine belongs, more appropriately, to the private sector, with APHIS providing only those services that specifically relate to biosecurity and disease diagnosis. Therefore, this final rule allows quarantine of imported ratite hatching eggs only at privately operated quarantine facilities that have been approved by the Administrator in accordance with § 92.106(c) of this final rule.

Ratites from Canada

Several commenters asked that ratites from Canada be exempt from the requirements in this rule. At this time, Canada does not have regulations similar to our own on the importation of ratites and hatching eggs of ratites. In the absence of such regulations, ratites imported into the United States from Canada would have an unknown status with respect to communicable diseases and ectoparasites. We have therefore determined that ratites may be imported from Canada only under the terms of this final rule.

Quarantine Space for Ratites

A few commenters expressed concern that demand for quarantine space for ostriches at the New York Animal Import Center will be so high that space will not be available for other types of ratites. Our final rule provides no special considerations for ostriches. Requests to the NYAIC for quarantine space for ostriches will be treated exactly the same way as requests for quarantine space for other types of ratites; that is, reservations will be made on a space-available basis as requests are received. Under this final rule, ratites other than ostriches may also be quarantined at the facility in Honolulu, HI.

Economic Considerations

Many commenters said that competition from imported ratites and hatching eggs would drive down the prices of ratites in this country and cause financial ruin to U.S. breeders. A number of other commenters maintained that if we allowed the importation of ratites, we should require that they be imported "for breeding and not for sale." Some commenters said that we should restrict the number of ratites that each breeder could import.

A more complete discussion of the expected economic impact of this rule is contained in this Supplementary Information under "Executive Order 12291 and the Regulatory Flexibility Act." In summary, however, we have determined that the interim rule that banned the importation of ratites in August 1989 may have resulted directly in an increase in the average retail price of an ostrich chicks and adult breeding pairs. Information given by ratite producer organizations indicates that the price for 30- to 90-day-old ostrich chicks rose from approximately $1,000–$2,500, to approximately $1,500–$5,000; while the price for adult breeding pairs increased by about $5,000 to $10,000, to the current price of approximately $35,000 to $50,000 a pair. This final rule is expected to cause the average retail price of ostrich chicks to decrease to the prices they were bringing before August 1989. We do not expect this final rule to have an immediate effect on the price of domestic breeding ostriches, however, because adult ostriches will not be permitted entry and it takes about 3½ years for a chick to reach breeding age.

It also must be understood that APHIS prohibited the importation of ostriches and other ratites in 1989 because of the potential disease risk they presented, and not to cause a change in prices. Our rulemaking authority with respect to importations of ratites is limited to preventing the introduction and spread of communicable diseases. We have therefore made no changes in the final rule based on these comments.

Miscellaneous

One commenter asked if hatching eggs could be released from quarantine without further restriction if the eggs were cleaned with a mild disinfectant prior to hatch. Although disinfection will inactivate some disease organisms, it will not eliminate the risk that the developing chicks might be infected with a communicable disease. Therefore, we have made no change in the final rule based on this comment.

One commenter asked if there would be a "paper trail" for chicks from imported hatching eggs, and whether standing operating procedures were in place for epidemiologic followups. Since chicks from hatching eggs must be accompanied to the United States by both a permit and a health certificate, the origin of chicks in quarantine will be known, and epidemiological followups on the flock of origin could be undertaken if a disease problem is identified. We do not believe other steps are necessary at this time, because the chicks will not be released from quarantine in the United States unless they are determined to be free of

evidence of communicable disease, and release will be made on an all-in, all-out basis.

One commenter recommended that ratites be quarantined in the United States for 60 to 90 days. Section 92.106 of this final rule [§ 92.11(e) of the proposal] provides that ratites will be quarantined in the United States for a minimum of 30 days, and for such longer time as may be required by the Administrator to determine the ratites' freedom from ectoparasites and communicable diseases. Thus, a quarantine period of 60 to 90 days is already provided for by the regulations if necessary.

Several commenters complained that our rule contained no provisions to ensure the "quality of stock" or the nutrition of foreign birds that produce hatching eggs for export. These concerns must be the responsibility of the importer or other parties interested in bringing ratites or hatching eggs into the United States. As already noted, APHIS's rulemaking authority with respect to importations of ratites, including hatching eggs, is limited to preventing the introduction and spread of communicable diseases. Therefore, we have made no changes in the final rule based on these comments.

In response to commenters' concerns about ectoparasites, § 92.101(b) of this final rule prohibits ratites and hatching eggs of ratites from being imported in any container that holds hay, straw, grasses, wood chips, sawdust, or other materials likely to harbor ectoparasites. This new provision further states that ratites and hatching eggs of ratites that are imported into the United States in containers holding such materials will be refused entry. This requirement is necessary to prevent ticks and other ectoparasites from being brought into the United States in packing materials.

In addition, in response to the general concerns expressed about diseases and ectoparasites being introduced by ratites and hatching eggs of ratites, we are changing the language in § 92.106 regarding inspection at the port of entry from the current "shall be subjected to inspection," to "must be inspected." This change will clarify our inspection requirements.

This final rule also contains a number of nonsubstantive editorial changes that were necessitated by the publication of a final rule that reorganized Part 92 on August 2, 1990 [55 FR 31484–31562]. Other nonsubstantive editorial changes were made to make the provisions applicable to ratites and hatching eggs of ratites easier to find and understand.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 601 *et seq.*, we have performed a Final Regulatory Flexibility Analysis, set forth below, regarding the economic effect of this rule on small entities.

In accordance with 21 U.S.C. 134c, the Secretary of Agriculture is authorized to promulgate regulations that prohibit or restrict the importation into the United States of animals likely to introduce or disseminate any communicable animal disease when he determines that such action is necessary to protect livestock or poultry. This rule will allow the importation of ratites under conditions intended to prevent the introduction of communicable diseases that may be transmitted to livestock and poultry by ectoparasites and other agents. This rule also will allow the importation of hatching eggs under conditions intended to prevent the introduction of communicable diseases of poultry. In addition, this rule will prohibit ratites from transiting the United States from one foreign country to another because of the risk that disease-causing ectoparasites would be introduced during the in-transit movements.

This rule will primarily affect domestic ratite breeders. A small number of importers, brokers, and zoological organizations also will be affected.

Although this discussion contains some information about ratites other than ostriches, the economic analysis focuses on impact of the rule on the ostrich industry.[1] This focus was selected because other species of ratites were not imported in commercial quantities before August 1989, when the importation of ratites was prohibited because of concerns about exotic ticks. [See 54 FR 34485–34487, Docket No. 89–123, published August 21, 1989.]

Ratite production is a small but growing industry in the United States. There are approximately 1,000 to 2,000 domestic ratite breeders, the majority of which specialize in raising ostriches or emus. Approximately, 95 percent of ratite breeders own fewer than three breeding pairs and would be classified as small entities for purposes of this rule. It is estimated that the U.S. population of ratites consists of about 6,500 to 8,000 ostriches, 4,000 to 5,000 emus, and smaller numbers of cassowaries, kiwis, and rheas.

Most ostriches and emus hatched in the United States are raised for breeding purposes. Various domestic ratite organizations have been formed with the long-term goal of developing a commercial slaughter market for the birds. The first step would be to increase the population of ostriches and emus to a level that could sustain a slaughter market. The birds could then be used for meat, leather, and feathers. Additionally, the body fat of emus could be used to make an oil that forms the base of some cosmetic and pharmaceutical products.

Since 1986, the demand for ostrich products has increased steadily in the United States, resulting in an increased demand for breeding stock. To meet the demand for breeding stock, the number of imported ostriches rose from zero in 1986 to more than 800 in 1989. Most of the imported ostriches came from Tanzania.

Before August 1989, the average retail price of an imported ostrich chick ranged from $1,077 to $1,889. Domestically produced ostrich chicks from high quality breeding stock retailed for up to $2,500. Since then, and as a direct result of the prohibition on the importation of ratites, the average retail price of an ostrich chick has increased to between $1,500 to $5,000.

We estimate that, after implementation of this final rule, the average retail price of both imported and domestically produced ostrich chicks will decrease to the August 1989 level.

The final rule will permit the importation of ratite hatching eggs for the first time. The average retail price of domestically produced ostrich eggs

[1] Estimates of the number of ratite breeders in the United States, the size of the domestic ratite populations, and past and present retail prices for ratites are based on information obtained in telephone interviews with the following organizations: American Emu Association, American Ostrich Association, Gulf Coast Ostrich Breeders Group, Louisiana Ostrich Association, National Ostrich Association, Southwest Ostrich Breeders Association, and Western Region Ostrich Association.

before August 1989 ranged from $450 to $600. The current average price ranges from $1,000 to $1,200. We estimate that, after implementation of this final rule, the average retail price of ostrich hatching eggs will level off to between $575 and $650.

Except as may be allowed by the Administrator for zoological birds, adult breeding ostriches may not be imported under this final rule. The current price of a breeding pair ranges from about $35,000 to $50,000—an increase of $5,000 to $10,000 since August 1989. Because it takes approximately 3½ years for an ostrich chick to reach maturity and begin producing offspring, this final rule is not expected to have an immediate effect on the price of adult breeding birds. The price is expected to decrease over time, however, as the domestic population increases.

Because the price of imported ostrich chicks and hatching eggs will initially be lower than the price of those that are domestically produced we expect that demand for imported chicks and hatching eggs will be high until price discrepancies are corrected. The New York Animal Import Center estimates that it can process approximately 300 chicks per month. We anticipate that hatching eggs will be imported in greater quantities because they may be quarantined at privately owned facilities and because of the lower costs involved in importing the eggs.

In the short run, the influx of imported ostrich chicks and hatching eggs is expected to have a minor adverse economic effect on some domestic ratite breeders. However, the domestic ratite industry is expected to benefit from the imports in the long run. A larger supply will result in lower domestic prices for ratites and ratite products, making it more feasible for small entities to enter the business or expand their operations. Reduced prices will lead to larger domestic populations of ostriches and other ratites, improving the outlook for a domestic slaughter market and benefiting domestic consumers of ostrich products.

Several alternatives to the provisions in this rule were considered during rulemaking. As discussed in the Initial Regulatory Flexibility Analysis that was prepared for the proposed rule, we considered allowing the importation of ratites through privately owned quarantine facilities. This alternative was rejected because the exemption granted by the Environmental Protection Agency for use of carbaryl as a pesticide on ratites only permits use of the pesticide by APHIS personnel at the New York Animal Import Center, Newburgh, NY, and the APHIS quarantine facility in Honolulu, HI.

We also considered establishing procedures for importing ratite hatching eggs through quarantine facilities approved specifically for these types of hatching eggs, rather than through facilities approved in accordance with the current regulations for private bird quarantine facilities. However, we did not pursue this alternative because it appears that biosecurity and other quarantine requirements for hatched ratite chicks would be the same as for other birds.

We also considered and adopted in this final rule an alternative port of entry and quarantine location for ratites other than ostriches. Ratites other than ostriches may arrive in the United States through the Port of Honolulu, HI and be quarantined at the APHIS facility there. The proposed rule would have required all ratites to arrive in New York for quarantine at the New York Animal Import Center in Newburgh, NY. This alternative port of entry and quarantine location will reduce the time and cost required to ship ratites that originate in Asia, Australia, and other areas of the Pacific.

Paperwork Reduction Act

In accordance with § 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information collection provisions included in this rule have been submitted for approval to the Office of Management and Budget.

Executive Order 12372

This program/activity is listed in the Catalog of Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. [See 7 CFR part 3015, subpart V.]

List of Subjects in 9 CFR Part 92

Animal disease, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, we are amending 9 CFR part 92 as follows:

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

2. In part 92, subpart A is amended by redesignating footnotes 9, 10, 11, 12, and 13, and the footnote designators as footnotes 10, 11, 12, 13, and 14.

§ 92.100 [Amended]

3. In § 92.100, the definitions of "Pet birds" and "Performing or theatrical birds" are amended by adding a comma and the phrase "except ratites" immediately after the first word, "Birds"; the definition of "Ratites" is amended by adding the word "kiwis," immediately after the word "emus,"; and a new definition of "pen-raised" is added, in alphabetical order, to read as follows:

§ 92.100 Definitions.

Pen-raised. Cared for in a fenced enclosure, such that the ratites are kept apart from wild ratites, poultry, and other animals; can be readily observed, and, when necessary, restrained for inspection and treatment.

* * * * *

§ 92.101 [Amended]

4. In § 92.101, paragraph (b)(1) is amended by: (1) removing the phrase "other than ratites" and (2) by adding a comma and the phrase "except for ratites," after the word "or".

5. In § 92.101, paragraph (b)(2) is revised and new paragraphs (b)(3) and (b)(4) are added to read as follows:

§ 92.101 General prohibitions; exceptions.

* * * * *

(b) * * *

(2) Ratites and hatching eggs of ratites may be imported into the United States only in accordance with the provisions in this part that apply to commercial and zoological birds, and, where specified, with the provisions that apply to ratites or hatching eggs of ratites.

(3)(i) Except for ratites imported as zoological birds, ratites and hatching eggs of ratities shall not be imported into the United States unless they were produced by a pen-raised flock, and, in the case of ratites, maintained in a pen-raised flock; and

(ii) Ostriches shall not be imported into the United States if they exceed either 36 inches in height (as measured from the top of the head to the base of the feet) or 30 pounds in weight; except that the Administrator may allow an exemption for ostriches imported as zoological birds, if the Administrator determines that APHIS personnel and facilities are available to handle and treat the larger ostriches during quarantine in the United States, and that

the treatment and quarantine provisions contained in this Subpart are sufficient to ensure that the ostriches will not present a significant risk of introducing communicable diseases that may be transmitted to livestock or poultry by ectoparasites or other agents. Factors that will be considered include, but are not limited to, the number of ostriches in the shipment, the length of time the ostriches have been in captivity, and the environment(s) in which the ostriches have existed.

(4) Ratites and hatching eggs of ratites may not be imported into the United States in any container that holds hay, straw, grasses, wood chips, sawdust, or other materials likely to harbor ectoparasites. Ratites and hatching eggs of ratites that are imported into the United States in containers holding such materials will be refused entry.

* * * * *

6. In § 92.101, paragraph (d) introductory text, the text following the semicolon is amended by removing the words "poultry or", and the text from the beginning up to and including the phrase "healthy poultry or birds" is revised to read as follows:

* * * * *

(d) The provisions in this subpart relating to birds shall not apply to healthy birds, except ratites, * * *

* * * * *

7. In § 92.103, paragraph (a)(1) is amended by adding a sentence at the end to read as follows:

§ 92.103 Import permits for birds; [7] and reservation fees for space at quarantine facilities maintained by APHIS.

(a) * * *

(1) * * * In addition, the application for a permit to import ratites or hatching eggs of ratites shall specify the number of ratites or hatching eggs intended for importation, the size of the flock of origin, and the location of the premises where the flock of origin is kept; and shall state that, from the date of application through the date of export, APHIS representatives shall be granted access to the premises where the flock of origin is kept. (For ratites intended for importation as zoological birds, the flock of origin shall be the ratites intended for importation.)

* * * * *

8. In § 92.103, paragraph (a)(2) is redesignated as paragraph (a)(2)(i), and new paragraphs (a)(2)(ii) and (a)(2)(iii) are added to read as follows:

* * * * *

(2) * * *

(ii) In addition, a permit to import ratites or hatching eggs of ratites will be denied or withdrawn unless APHIS representatives are granted access to the premises where the flock of origin is kept (or, in the case of zoological birds, to the premises where the birds are kept), from the date of the application for the permit through the date of export; and

(iii) Except for ratites intended for importation as zoological birds, a permit to import ratites or hatching eggs of ratites will be denied or withdrawn unless an APHIS representative has visited the premises where the flock of origin is kept within the 12-month period before the intended importation and has determined that the flock is pen-raised and contains sufficient breeding pairs to produce the number of ratites or hatching eggs intended for importation.

* * * * *

9. Section 92.104 is revised to read as follows:

§ 92.104 Certificate for pet birds, commercial birds, zoological birds, and research birds.

(a) *General.* All pet birds, except as provided for in § 92.101 (b) and (c) of this part; all research birds; and all commercial birds and zoological birds, including ratites and hatching eggs of ratites, offered for importation from any part of the world, shall be accompanied by a certificate issued by a full-time salaried veterinary officer of the national government of the exporting country, or issued by a veterinarian authorized by the national government of the exporting country and endorsed by a full-time salaried veterinary officer of the national government of that country.

(b) *Birds other than ratites.* The certificate for birds other than ratites must state:

(1) That all birds covered by the certificate have been inspected by the veterinarian issuing the certificate;

(2) That no evidence of Newcastle disease, ornithosis, or other communicable disease of poultry was found among the birds;

(3) That insofar as has been possible to determine, the birds were not exposed to Newcastle disease, ornithosis, or other communicable disease of poultry during the 90 days immediately preceding their exportation;

(4) That the birds have not been vaccinated with Newcastle disease vaccine;

(5) That Newcastle disease did not occur anywhere on the premises from which the birds were to be exported or on adjacent premises during the 90 days immediately preceding the exportation of the birds;

(6) That neither the premises from which the birds were to be exported nor any adjacent premises were located in any area under quarantine for poultry diseases at any time during the 90 days immediately preceding the exportation of the birds; and

(7) That the birds were placed into previously unused containers at the premises from which the birds were to be exported.

(c) *Ratites other than hatching eggs.* The certificate for ratites other than hatching eggs must state:

(1) That, except as provided in paragraph (c)(13) of this section, all ratites covered by the certificate, and their flock of origin, have been inspected by the veterinarian issuing the certificate;

(2) That, except when the certificate is for zoological birds, the flock of origin is pen-raised and the ratites covered by the certificate were produced by and maintained in that flock;

(3) That no evidence of Newcastle disease, ornithosis, or other communicable disease of poultry was found in the flock of origin;

(4) That insofar as has been possible to determine, the flock of origin was not exposed to Newcastle disease, ornithosis, or other communicable disease of pountry during the 90 days immediately preceding the exportation;

(5) That none of the ratites intended for shipment to the United States have been vaccinated with Newcastle disease vaccine;

(6) That Newcastle disease did not occur anywhere on the premises where the flock of origin was kept or on adjacent premises during the 90 days immediately preceding the exportation;

(7) That neither the premises where the flock of origin was kept nor any adjacent premises was located in any area under quarantine for poultry diseases at any time during the 90 days immediately preceding the exportation;

(8) That at least 3 days but not more than 14 days before being loaded for shipment to the United States, the ratites were treated with a pesticide of a type and concentration sufficient to kill ectoparasites on the ratites;

(9) That the pesticide was applied to all body surfaces of the ratites under the supervision of the veterinarian issuing the certificate;

(10) that the ratites, after being treated for ectoparasites, did not have physical

[7] For other permit requirements for birds, the regulations issued by the U.S. Department of the Interior (parts 14 and 17, title 50, Code of Federal Regulations) should be consulted.

contact with, or share a pen or bedding materials with, any ratite not in the same shipment to the United States; and

(11) That the ratites were placed in previously unused containers for shipment to the United States at the premises where the flock of origin was kept.

(12) The certificate must also state the name, concentration, and date of administration of the pesticide used to treat the ratites for ectoparasites.

(13) When ratites intended for importation are zoological birds, only the ratites to be imported must be inspected, and the provisions in paragraphs (c)(3), (c)(4), (c)(5), (c)(6), (c)(7), and (c)(11) that apply to the flock of origin shall apply only to the ratites intended for importation.

(d) *Hatching eggs of ratites.* The certificate for hatching eggs of ratites must state:

(1) That the flock of origin of the hatching eggs has been inspected by the veterinarian issuing the certificate;

(2) That the flock of origin is pen-raised, and the hatching eggs to be imported were produced by that flock;

(3) That no evidence of Newcastle disease, ornithosis, or other communicable disease of poultry was found in the flock of origin;

(4) That insofar as has been possible to determine, the flock of origin was not exposed to Newcastle disease, ornithosis, or other communicable disease of poultry during the 90 days immediately preceding the exportation of the hatching eggs;

(5) That Newcastle disease did not occur anywhere on the premises where the flock of origin was kept or on adjacent premises during the 90 days immediately preceding the exportation of the hatching eggs;

(6) That neither the premises where the flock of origin was kept nor any adjacent premises were located in any area under quarantine for poultry diseases at any time during the 90 days immediately preceding the exportation of the hatching eggs; and

(7) That the hatching eggs were placed into previously unused containers for shipment to the United States at the premises where the flock of origin was kept.

* * * * *

10. Section 92.105 is amended by revising paragraph (a), up to and including the word "inspection", and by adding a new paragraph (c) to read as follows:

§ 92.105 Inspection at the port of entry.

(a) All commercial birds, zoological birds, and research birds, including hatching eggs of ratites, but excluding other ratites, imported from any part of the world must be inspected * * *

* * * * *

(c) Ratites, other than hatching eggs of ratites, imported from any part of the world must be inspected at the Customs port of entry by a veterinary inspector of APHIS and shall be permitted entry only at one of the following ports of entry:

(1) Ostriches: New York, NY; and Stewart Airport, Newburgh, NY;

(2) Ratites other than ostriches: New York, NY; Stewart Airport, Newburgh, NY; and Honolulu, HI.

11. Section 92.106 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 92.106 Quarantine requirements.

(a) *Birds other than ratites and hatching eggs of ratites.* Each lot of pet birds, except as provided for in § 92.101(c) of this part; research birds; and commercial birds and zoological birds, except ratites and hatching eggs of ratites, imported from any part of the world shall be quarantined for a minimum of 30 days, and for such longer period as may be required by the Administrator, Veterinary Services, in any specific case, on an "all-in, all-out" basis, at one of the ports of entry specified in § 92.105(a), at a USDA quarantine facility when arrangements have been made in advance by the importer and approval is granted in the permit described in § 92.103, or in facilities which have been approved by the Administrator as provided in paragraph (c) of this section. * * *

* * * * *

11a. In § 92.106 paragraphs (b), (c), and (d) are redesignated as paragraphs (c), (d), and (e), respectively; the cross reference in paragraph (a), and newly redesignated paragraphs (c) and (d) are amended as follows:

a. In paragraph (a):

1. in the sixth sentence remove the words "paragraph (b)(7)" and add the words "paragraph (c)(7)";

2. in the seventh and eighth sentences remove the words "paragraph (b)" and add the words "paragraph (c)";

3. in the last sentence remove the words "paragraph (b)(3)(ii)(E)" and add the words "paragraph (c)(3)(ii)(E)".

b. In paragraph (c):

1. in the first sentence remove the words "(b)(1) through (6)" and add the words "(c)(1) through (c)(6)";

2. at the end of the last sentence of the introductory text remove the words "§§ 92.106(c)" and add "§§ 92.106(d)";

3. in paragraph (c)(5)(vi), the third sentence, remove "(b)(6)(ii) (B) or (C)" and add "(c)(6)(ii)(B) or (C)";

4. in paragraph (c)(6)(i), the first sentence, remove "(b)(6)(ii)" and add "(c)(6)(ii)";

5. in paragraph (c)(6)(ii) remove "(b)(6)(iv)" to read "(c)(6)(iv)";

6. in paragraph (c)(6)(iv), the first sentence, remove "(b)(6)" and add "(c)(6)";

7. in paragraph (c)(7)(i) remove "(b)(7)(iii)" and add "(c)(7)(iii)";

8. in paragraph (c)(7)(ii) remove "(b)(7)(iii)" and add "(c)(7)(iii)";

9. in paragraph (c)(7)(iii)(A)(13) remove "§ 92.106(b)(3)(ii)(C)" and add "§ 92.106(c)(3)(ii)(C)";

10. in paragraph (c)(7)(iii)(C)(2) remove "(b)(7)(iii)(A)(*16*)" and add "(c)(7)(iii)(A)(*16*)";

c. In paragraph (d) at the end of the introductory text remove the words "paragraph (c)" and add "paragraph (d)";

11b. Section 92.106 is amended by adding a new paragraph (b) to read as follows:

* * * * *

(b) *Ratites and hatching eggs of ratites.*

(1) Each lot of ratites imported from any part of the world shall be quarantined upon arrival for a minimum of 30 days, and for such longer period as may be required by the Administrator to determine the ratites' freedom from ectoparasites and communicable diseases. Quarantine shall be on an "all-in, all-out" basis, at the New York Animal Import Center at Newburgh, NY, when the port of entry is either New York, NY, or Stewart Airport, Newburgh, NY or at USDA quarantine facilities in Honolulu, HI, when the port of entry is Honolulu, HI. Reservations for space in these quarantine facilities must be made in advance of arrival and in accordance with § 92.103 of this part.

(2) Each lot of hatching eggs of ratites imported from any part of the world shall be quarantined upon arrival, incubated for the full incubation period (approximately 42 days), and held in quarantine for a minimum of 30 days following the hatch of the last chick in the lot, and for such longer period as may be required by the Administrator to determine the ratites' freedom from communicable diseases. Quarantine shall be conducted at a facility approved by the Administrator in accordance with paragraph (c) of this section, and in the manner prescribed by paragraph (c) of this section.

(3) During the quarantine period, the ratites, including chicks hatched in quarantine, shall be tested for viral diseases of poultry, including Newcastle disease. If any of the ratites exhibit evidence of other communicable

diseases, they will be subjected to such additional tests as may be required by the Administrator to determine their freedom from communicable diseases. Ratites other than those imported as hatching eggs also shall be treated for ectoparasites [9] by an inspector until the inspector determines that the ratites are free of ectoparasites.

(4) If the ratites, including chicks hatched during quarantine, are determined to be free communicable diseases, the port veterinarian shall issue an agricultural release for entry through U.S. Customs. If the port veterinarian finds evidence of communicable disease, or exposure to communicable disease, during port of entry inspection or quarantine of the ratites, the ratites shall be refused entry, or shall be held in quarantine until they are determined to be free of communicable disease, or shall be otherwise disposed of as directed by the Administrator, in accordance with § 2 of the Act of July 2, 1962 (21 U.S.C. 134a).

* * * * *

Done in Washington, DC, this 8th day of July, 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-16544 Filed 7-10-91; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-101-AD; Amendment 39-7026; AD 91-09-51]

Airworthiness Directives; Boeing of Canada, Ltd., de Havilland Division, Model DHC-8-100 and -300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting Airworthiness Directive (AD) 91-09-51, which was previously made effective as to all known U.S. owners and operators of de Havilland Model DHC-8-100 and -300 series airplanes by individual telegrams. This AD requires a one-time visual inspection of the flight crew oxygen lines and the adjacent electrical feeder cables for chafing, and repair or replacement of damaged flight crew oxygen lines or electrical feeder cables, if necessary. This action is prompted by a recent report of complete depletion of the flight crew's oxygen caused by a hole in the flight crew oxygen line. This condition, if not corrected, could result in an oxygen-fed, in-flight fire under the flight compartment floor.

DATES: Effective July 29, 1991, as to all persons except those persons to whom it was made immediately effective by telegraphic AD 91-09-51, issued April 25, 1991, which contained this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 29, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Cuneo, New York Aircraft Certification Office, Systems and Equipment Branch, ANE-173; telephone (516) 791-6427. Mailing address: FAA, New England Region, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581.

SUPPLEMENTARY INFORMATION: On April 25, 1991, the FAA issued telegraphic AD T91-09-51, applicable to de Havilland Model DHC-8-100 and -300 series airplanes, which requires a one-time visual inspection of the flight crew oxygen lines and the adjacent electrical feeder cables for chafing, and repair or replacement of damaged flight crew oxygen lines or electrical feeder cables, if necessary. The inspection and repair/replacement procedures are to be accomplished in accordance with Boeing of Canada de Havilland Division Alert Service Bulletin A8-35-5, Revision A, dated April 5, 1991.

That action was prompted by a recent report of complete depletion of the flight crew's oxygen, caused by a hole in the flight crew oxygen line. Further investigation revealed that the flight crew oxygen line was chafed by an adjacent electrical feeder cable. Electrical arcing occurred between the feeder cable and the oxygen line. This condition, if not corrected, could result in an oxygen-fed, in-flight fire under the flight compartment floor.

This airplane model is manufactured in Canada and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on April 25, 1991, to all known U.S. owners and operators of de Havilland Model DHC-8-100 and -300 series airplanes. These conditions still exist, and the AD is hereby published in the Federal Register as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective as to all persons.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Federal Aviation Administration has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

[9] APHIS will use an EPA registered dust formulation that contains 5 percent carbaryl as the only active ingredient. The dust formulation will be used in accordance with all applicable directions, restrictions, and precautions on the label. Treated birds may not be slaughtered for food purposes.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation Safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91–09–51. Boeing of Canada, Ltd., De Havilland Division: Amendment 39–7026. Docket No. 91–NM–101–AD.

Applicability: de Havilland Model DHC–8–100 and -300 series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent an oxygen-fed, in-flight fire under the flight compartment floor, accomplish the following:

(a) Within 24 hours after the effective date of this amendment, perform a visual inspection of the flight crew oxygen lines and adjacent electrical feeder cables in accordance with Boeing of Canada de Havilland Division Alert Service Bulletin A8–35–5, Revision A, dated April 5, 1991.

(b) If evidence of chafing is found in the crew oxygen lines or adjacent electrical feeder cables, prior to further flight, repair or replace damaged lines or cables, in accordance with Boeing of Canada de Havilland Division Alert Service Bulletin A8–35–5, Revision A, dated April 5, 1991.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

The inspection and repair or replacement requirements shall be done in accordance with Boeing of Canada de Havilland Division Alert Service Bulletin A8–35–5, Revision A, dated April 5, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39–7026, AD 91–09–51) becomes effective July 29, 1991 as to all persons, except those persons to whom it was made immediately effective by telegraphic ADT91–09–51, issued April 25, 1991, which contained this amendment.

Issued in Renton, Washington, on May 28, 1991.

Jim Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–16611 Filed 7–11–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 90–NM–279–AD; Amendment 39–7069; AD 91–15–06]

Airworthiness Directives; McDonnell Douglas Model DC–8F, DC–8–61F, –62F, –63F, –71F, –72F, and –73F Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–8 series airplanes, which requires inspection and replacement of the cargo door latch spool fitting attach bolts. This amendment is prompted by a report of broken latch spool fitting attach bolts found on a Model DC–9 series freighter airplane. This condition, if not corrected, could result in inadvertent opening of the main cargo door in flight, and subsequently lead to loss of pressurization and reduced controllability of the airplane.

EFFECTIVE DATE: August 16, 1991.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801, Attention: Business Unit Manager, Technical Publications & Technical Administrative Support C1–L5B (54–60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Cecil, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM–122L, FAA, Northwest Mountain Region, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (213) 988–5322.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain McDonnell Douglas Model DC–8 series airplanes, which requires magnetic particle inspections of the cargo door latch spool fitting attach bolts and replacement of non-Inconel bolts with Inconel bolts, was published in the **Federal Register** on January 28, 1991 (56 FR 3056).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supported the proposal.

Another commenter suggested that the magnetic particle inspection interval specified in the proposed rule be extended from four months to twelve months. Such an extension would provide operators with the option of replacing H–11 bolts with Inconel bolts on a more cost effective basis in conjunction with normally scheduled maintenance. The FAA does not totally agree. The FAA notes that it is only the initial inspection that is required within 4 months; repetitive inspections are required at 12-month intervals thereafter. In developing an appropriate initial compliance time for this AD action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the practical aspects of incorporating the required inspections into affected operators' maintenance schedules in a timely manner. In light of these factors, the FAA considers an initial compliance time of 4 months to be warranted.

One commenter noted that the referenced McDonnell Douglas Service Bulletin 52–82, Revision 3, lists three additional Inconel bolt vendor part numbers, which were not listed in proposed paragraphs B. or C. as acceptable parts (that is, bolts which do not need to be repetitively inspected in accordance with proposed paragraph A., and bolts which, if installed, constitute terminating action for the repetitive inspections). The commenter asked if a request for an alterantive means of compliance was required to permit installation of these bolts. The FAA

considers the three specific bolts to be satisfactory, and has revised paragraphs B. and C. of the final rule to include reference to these bolts.

Paragraph E. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternate means of compliance.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhouse (as cited in the preamble to the notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 164 McDonnell Douglas Model DC-8 series airplanes of the affected design in the worldwide fleet. It is estimated that 112 airplanes of U.S. registry will be affected by this AD, that it will take approximately 13.8 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. The cost of parts required to accomplish the terminating action is estimated to be $4,800 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $622,608.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-15-06 McDonnell Douglas: Amendment 39-7069. Docket 90-NM-279-AD.

Applicability: All Model DC-8F, DC-8-61F, -62F, -63F, -71F, -72F, and -73F series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent inadvertent opening of the forward upper cargo door in flight, a condition which could result in loss of pressurization and reduced controllability of the aircraft, accomplish the following:

A. Within four months after the effective date of this AD, and thereafter at intervals not to exceed one year, perform magnetic particle inspections on the cargo door latch spool fitting attach bolts or replace the non-Inconel (H-11) cargo door latch spool fitting attach bolts with new bolts, in accordance with the Accomplishment Instructions for Phase 2 of McDonnell Douglas DC-8 Service Bulletin 52-82 Revision 3, dated October 19, 1990 (hereafter referred to as "the Service Bulletin").

1. If a bolt does not pass the magnetic particle inspection, prior to further flight, replace it with a new bolt and seal in accordance with the Service Bulletin.

2. If a bolt passes the magnetic particle inspection, prior to further flight, reinstall the bolt and seal in accordance with the Service Bulletin.

B. The inspections required by paragraph A. of this AD are not required for Inconel bolts, part numbers RA21026-7-23, 77711-7-24, 3D0031-7-24, VCC0098-7-24, 1489-7-24, or 577-7-24.

C. Within two years after the effective date of this AD, replace all non-Inconel cargo door latch spool fitting attach bolts with Inconel bolts, part numbers RA21026-7-23, 77711-7-24, 3D0031-7-24, VCC0098-7-24, 1489-7-24, or 577-7-24, in accordance with the Service Bulletin. Installation of these Inconel bolts constitutes terminating action for the requirements of paragraph A. of this AD.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes unpressurized to a base for the accomplishment of the requirements of this AD.

E. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-0001, Attention: Business Unit Manager, Technical Publications, C1-HCW (54-60). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment (39-7069, AD 91-15-06) becomes effective August 16, 1991.

Issued in Renton, Washington, on July 1, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-16610 Filed 7-11-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Request for information on the effectiveness of the operating regulations in meeting the goals of the Outer Continental Shelf Lands Act (OCSLA).

SUMMARY: The evaluation of MMS operating regulations is an ongoing effort, and the public is an important part of the evaluation process. The MMS rules were substantially modified in 1988 based on an effort started in 1983 with a request to the public for suggested improvements to MMS requirements. It has been 3 years since the final rules were published, and feedback is needed to help MMS to assess the effectiveness of the rules in meeting the goals of the OCSLA. The MMS does not intend to revisit the numerous issues addressed 3 years ago.

The objective of the review is to identify areas where improvements are possible, based on experience gained in operating under the rules or to respond to current issues, in order to more effectively provide for the following:

- Responsiveness to concerns of States and other affected entities.
- Safety of operations to protect personnel from death and injury.
- Protection of the environment.
- Prevention of waste, protection of correlative rights, and conservation of natural resources.
- Efficient mineral operations in the Outer Continental Shelf (OCS).

DATES: Comments must be received or postmarked by September 10, 1991.

ADDRESSES: Comments should be sent to Mr. John V. Mirabella; Acting Chief, Engineering and Standards Branch; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, VA 22070.

FOR FURTHER INFORMATION CONTACT: Mr. John V. Mirabella telephone (703) 787–1600 or FTS 393–1600 or Mr. Gerald Daniels telephone (703) 787–1554 or FTS 393–1554.

SUPPLEMENTARY INFORMATION: The consolidated oil and gas and sulphur operating regulations were published on April 1, 1988 (53 FR 10596), with an effective date of May 31, 1988. This final rule incorporated previous regulations; OCS Orders; Notices to Lessees and Operators; and to a lesser extent, industry standards; previously used conditions of approval; and several related instructional documents. Therefore, all previous OCS Orders, other than OCS Order No. 10 in the Gulf of Mexico Region which applied to Sulphur Operations, were superseded by the regulations and cancelled. There have been several changes in the regulations since they were published in 1988 but no major amendments.

Several amendments to the regulations are under consideration or have been adopted recently. Formal comments on the following rulemaking actions have been solicited in accordance with the Administrative Procedure Act. Therefore, this request for information does not reopen any of the proposals for comment where the comment period is closed, and completion of the rules will go forward on schedule. However, commenters are not precluded from advising MMS on the effectiveness or practicality of any of the operating regulations. A brief listing of most of these changes follows:

- A final rule was published on January 24, 1991 (56 FR 2678), which expands the well-control training requirements in 30 CFR part 250, Subpart O.
- A proposed rule was published on August 31, 1989 (54 FR 36244), which addresses sulphur operations in 30 CFR part 250, subpart P. This rule would replace OCS Order No. 10, Gulf of Mexico Region.
- A proposed rule was published on August 4, 1989 (54 FR 32316), which would amend and clarify the data to be protected from public disclosure. The data under consideration are required to be submitted to MMS on production related reporting forms but are proprietary to the operator.
- A proposed rule was published on January 24, 1990 (55 FR 2388), and corrected on February 2, 1990 (55 FR 3603), which would revise the bonding requirements for OCS oil and gas leases appearing at 30 CFR part 256, subpart I.
- A final rule was published on January 18, 1991 (56 FR 1912), which amended 30 CFR 250.57 and 250.106 concerning information to be maintained when blowout preventers are tested.
- A proposed rule was published on August 15, 1990 (55 FR 33326), which would amend 30 CFR 250.67 to be more consistent with current personnel exposure limits for hydrogen sulfide.
- A proposed rule was published on November 27, 1990 (55 FR 49301), which would amend 30 CFR part 250, subpart N, to implement the penalty provisions of the Oil Pollution Act of 1990.
- A proposed rule was published on August 16, 1990 (55 FR 33539), which would add a provision that MMS will investigate any apparent violation of regulations that are reported to MMS.
- An advance notice of proposed rulemaking was published on July 23, 1990 (55 FR 29860), concerning requirements for automatic shutdown valves on incoming pipelines at platforms.
- The MMS is also evaluating a concept that would require the OCS lessees and/or operators to develop and maintain a plan to implement a Safety and Environmental Management program (SEMP). A SEMP plan would describe the lessee's/operator's policies and procedures that will ensure safety and environmental protection while conducting oil and gas and sulphur operations on the OCS. The SEMP concept and proposed plan are also being published for public comment.
- In addition, a number of proposed rules are being drafted to amend the regulations concerning protection of archaeological resources, reporting forms, and documents incorporated by reference, such as ASME/ANSI: SPPE–1–1988 and API's Spec Q–1, 1990 edition.

In preparing the main body of the regulations at 30 CFR part 250, MMS attempted to follow the general principle that they were to establish performance standards in preference to detailed technical procedures to the extent that protection of the environment and safety of operations permit. The MMS intended to set goals for protection of the environment, property, and resources as well as safety of operations without precluding the use of new, different, better, or more efficient ways of reaching the goals than are delineated by detailed procedures. In short, what is to be accomplished takes precedence over how the goal is reached. However, in drafting regulations, it is often very difficult to achieve pure performance standards without including procedural specifics. In your opinion, do the regulations achieve the desired results? If not, how might they be improved?

The MMS is interested in any information offered on any of the sections of 30 CFR part 250 as they now stand, with particular emphasis on the five items listed in the summary section of this notice. Questions are not raised by MMS on each section, but some subject matter is worth emphasizing.

30 CFR 250.1 Documents incorporated by reference. Incorporation by reference is a mechanism that was established by statute and allows Federal agencies to meet the requirement to publish regulations in the **Federal Register** by referring to materials already published elsewhere. The legal effect of incorporation by reference is that the material is treated as if it were published in full in the **Federal Register** (5 U.S.C. 552(a)). This material, like any other properly issued regulation, has the force of law. The incorporation substantially reduces the volume of material published in the **Federal Register** by MMS. The matter incorporated is available to the extent necessary to afford fairness and uniformity in the administrative process.

A number of all or portions of standards, specifications, and recommended practices published by technical societies or consensus standards organizations have been incorporated by reference.

Heavy reliance has been made on specifications, standards, and recommended practices (RP) issued by the American Petroleum Institute (API). Are these documents readily available to your organization so that you may use them in your day-to-day activities? Are any of the documents inappropriate for application as regulations, i.e., particularly API RP's? Do you think MMS understands the implications of

incorporating documents by reference and how compliance with all of the document provisions may be accomplished? If it is not appropriate to incorporate the documents as they now stand, how could MMS better handle the material? Should MMS use this process?

Subpart B, beginning with 30 CFR 250.30, Exploration and Development and Production Plans. Are the information requirements reasonable and functional? Do the plans contain enough information to enable all concerned reviewers to reach valid conclusions? Keeping in mind that MMS is mandated by law to process Exploration Plans in 30 days and Development and Production Plans in 60 days, are the procedures in use sufficient and equitable for both reviewers and plan proponents?

The MMS will use the information received to develop regulatory initiatives in those subject areas where improvements are needed and possible. It may be that some of the initiatives will warrant discussion with the OCS Policy Committee, local/State other Federal Government agencies, other ocean users, and/or industry groups prior to rulemaking actions. If so, meetings will be scheduled and advertised so that all concerned persons will have an opportunity to present their viewpoints.

Dated: July 1, 1991.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 91–16622 Filed 7–11–91; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09–91–13]

Special Local Regulations: Joliet Waterway Daze, Des Plaines River, Joliet, IL

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special Local Regulations are being adopted for the Joliet Waterway Daze. This event will be held on the Des Plaines River, Joliet, IL, from 9:00 p.m. (cdst) until 11:00 p.m. (cdst) on the 27th of July 1991. The regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: These regulations will become effective from 9 p.m. (cdst) until 11 p.m. (cdst) on the 27th of July 1991.

FOR FURTHER INFORMATION CONTACT: Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, Search and Rescue Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199–2060, (216) 522–4420.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received until 6 June 1991, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of these regulations are Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, project officer, Search and Rescue Branch and M. Eric Reeves, Lieutenant Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Joliet Waterway Daze will be conducted on the Des Plaines River (mile 287 to mile 288.6) on the 27th of July 1991. This event will have forty to sixty, 21 to 62 foot, cruise boats and house boats that will participate in a lighted boat parade, which could pose hazards to navigation in the area for commercial vessel traffic of 20 meters or more in length (65.6 feet), within this section of the Des Plaines River. Any commercial vessel, which includes tug and barge combinations, of 20 meters or more in length (65.6 feet) desiring to transit the regulated area may do so only with the prior approval of the Patrol Commander (Officer in Charge, U.S. Coast Guard Station Calumet Harbor, IL).

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because of the short duration of these regulations, their economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 would be amended to add a temporary § 100.35–T0913 to read as follows:

§ 100.35 T0913 Joliet Waterway Daze, Des Plaines River, Joliet, IL.

(a) *Regulated area.* That portion of the Des Plaines River, Joliet, IL, from mile 287 (north of the Highway 80 Bridge) to mile 288.6 (in between Jackson Street and Ruby Street).

(b) *Special Local Regulations.* (1) The Coast Guard will be regulating vessel navigation and anchorage in the above area by commercial vessel traffic, which includes tug and barge combinations, of 20 meters or more in length (65.5 feet), from 9 p.m. (cdst) until 11 p.m. (cdst) on the 27th of July 1991. All commercial vessel traffic, which includes tug and barge combinations, of 20 meters or more in length (65.6 feet) are prohibited in this area during the regulated time, except when expressly authorized by the Coast Guard Patrol Commander. When determined appropriate by the Coast Guard Patrol Commander, commercial vessel traffic, which includes tug and barge combinations, of 20 meters or more in length (65.6 feet) will periodically be permitted to transit through the regulated area.

(2) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard

Patrol Commander". Commercial vessels, which include tug and barge combinations, of 20 meters or more in length (65.6 feet) desiring to transit the regulated area may do so only with the approval of the Patrol Commander and when so directed by that officer. All transiting vessels will be operated at bare steerageway, and will exercise a high degree of caution in the area.

(3) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel to signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Patrol Commander may establish vessel size and speed limitations, and operating conditions.

(5) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(6) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

Dated: June 28, 1991.

G.A. Penington,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 91–16632 Filed 7–11–91; 8:45 a]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD 09–91–06]

Special Local Regulations: APBA Great Lakes Challenge, Saginaw River, Bay City, MI

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special Local Regulations are being adopted for the APBA Great Lakes Challenge. This event will be held on the Saginaw River, Bay City, MI, on the 27th and 28th of July 1991, from 7 a.m. (e.d.s.t.) until 7 p.m. (e.d.s.t.), each day. The regulations are needed to provide for the safety of life and property on navigable waters.

EFFECTIVE DATE: These regulations will become effective from 7 a.m. (e.d.s.t.) until 7 p.m. (e.d.s.t.), each day, on the 27th and 28th of July 1991.

FOR FURTHER INFORMATION CONTACT: Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, Search and Rescue Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199–2060, (216) 522–4420.

SUPPLEMENTARY INFORMATION: On 24 April 1991, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for these regulations (56 FR 18794). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of this regulation are Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, project officer, Search and Rescue Branch and M. Eric Reeves, Lieutenant Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The APBA Great Lakes Challenge will be conducted on the Saginaw River, Bay City, MI, between the Liberty Bridge and the Veterans Memorial Bridge, on the 27th and 28th of July 1991. This event will have an estimated 150 jet skis and wetbikes racing in a closed course race, including slalom and freestyle racing marked by perimeter buoys, which could pose hazards to navigation in the area. In order to provide for the safety of life and property, the Coast Guard will be regulating vessel traffic within this section of the Saginaw River. When determined appropriate by the Coast Guard Patrol Commander, racing shall be suspended and, if necessary, race course buoys shall be removed to provide for the passage of all commercial vessel traffic on the days of racing. Commercial vessels desiring to transit the regulated area shall provide prior notification to the Coast Guard Patrol Commander to ensure a safe transit can be made. Recreational vessel traffic desiring to transit the regulated area may do so only with prior approval of the Coast Guard Patrol Commander (Officer in Charge, U.S. Coast Guard Station Saginaw River, MI).

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Temporary Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 would be amended to add a temporary § 100.35–T0906 to read as follows:

§ 100.35 T0906 APBA Great Lakes Challenge, Saginaw River, Bay City, MI.

(a) *Regulated Area.* That portion of the Saginaw River, Bay City, MI, between the Liberty Bridge on the north and the Veterans Memorial Bridge on the south.

(b) *Special Local Regulations.* (1) The Coast Guard will be regulating vessel navigation and anchorage in the above area from 7 a.m. (e.d.s.t.) until 7 p.m. (e.d.s.t.), each day, on the 27th and 28th of July 1991. When determined appropriate by the Coast Guard Patrol Commander, racing shall be suspended and race course buoys shall be removed to provide for the passage of all commercial vessels. When determined appropriate by the Coast Guard Patrol Commander, recreational vessel traffic will periodically be permitted to transit through the regulated area between race heats and during breaks.

(2) The Coast Guard will patrol the regulated are under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Commercial vessels desiring to transit the regulated

area shall provide prior notification to the Coast Guard Patrol Commander to ensure a safe transit can be made. All transiting vessel traffic will be operated at bare steerageway, and will exercise a high degree of caution in the area.

(3) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Patrol Commander may establish vessel size and speed limitations, and operating conditions.

(5) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(6) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

Dated: June 28, 1991.

G.A. Penington,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 91-16633 Filed 7-11-91; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD 09-91-15]

Special Local Regulations: 17th Annual Human Powered Speed Championships, Lake Michigan, Milwaukee Harbor, Milwaukee, WI

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special Local Regulations are being adopted for the 17th Annual Human Powered Speed Championships. The regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective from 5 a.m. (c.d.s.t.) until 12 p.m. (c.d.s.t.) on the 18th of August 1991.

FOR FURTHER INFORMATION CONTACT: Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, Search and Rescue Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199-2060, (216) 522-4420.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received until 13 June 1991, and there was not sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulations are Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, project officer, Search and Rescue Branch and M. Eric Reeves, Lieutenant Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The 17th Annual Human Powered Speed Championships will be conducted within the man-made lagoon adjacent to the Henry Maier Festival Park in the Milwaukee Harbor on the 18th of August 1991. This event will have approximately ten to twenty, 6 to 19 foot, human powered watercraft participating in various speed races, which could pose hazards to navigation in the area. Any vessel desiring to enter the regulated area may do so only with prior approval of the Patrol Commander (Officer in Charge, U.S. Coast Guard Station, Milwaukee, WI).

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. Any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Temporary Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35

2. Part 100 would be amended to add a temporary § 100.35–T0915 to read as follows:

§ 100.35 T0915 17th Annual Human Powered Speed Championships, Lake Michigan, Milwaukee Harbor, Milwaukee, WI

(a) *Regulated Area:* That portion of Lake Michigan, Milwaukee Harbor, an area defined as the lagoon or basin within the uncharted man-made island, north of the mouth of the Milwaukee River and directly adjacent to the Henry Maier Festival Park, enclosed by shore on the west and a "comma" shaped man-made island on the east. The construction of the man-made island is such that a small "basin" or "lagoon" has been created with one entrance located at the northwest end, thus, there is no "thru traffic".

(b) *Special Local Regulations:*

(1) The Coast Guard will be regulating vessel navigation and anchorage in the above area from 5 a.m. (c.d.s.t.) until 12 p.m. (c.d.s.t.) on the 18th of August 1991.

(2) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Any vessel, not authorized to participate in the event, desiring to enter the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. When granted approval by the Coast Guard Patrol Commander, vessels entering the regulated area will be operated at bare steerageway, and will exercise a high degree of caution in the area.

(3) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result

in expulsion from the area, citation for failure to comply, or both.

(4) The Patrol Commander may establish vessel size and speed limitations, and operating conditions.

(5) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(6) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

Dated: June 28, 1991.

G. A. Penington,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 91-16635 Filed 7-11-91; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD 09-91-14]

Special Local Regulations: Coast Guard Festival Fireworks, Grand River, Grand Haven Harbor, Grand Haven, MI

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special Local Regulations are being adopted for the Coast Guard Festival Fireworks to be held on the Grand River, Grand Haven Harbor, Grand Haven, MI, on the 3rd of August 1991. The regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: These regulations will become effective from 3 p.m. (e.d.s.t.), 3 August 1991 until 3 a.m. (e.d.s.t.), 4 August 1991.

FOR FURTHER INFORMATION CONTACT: Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, Search and Rescue Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199-2060, (216) 522-4420.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received until 13 June 1991, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this rulemaking are Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, project officer, Search and Rescue Branch and M. Eric Reeves, Lieutenant Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Coast Guard Festival Fireworks will be conducted in Grand Haven Harbor, Grand Haven, MI. The fireworks will be fired from Dewey Hill over the Grand Haven Harbor on the 3rd of August 1991. Along with the fireworks display, other festivities are planned that will draw an estimated 500 to 1000 spectator craft in the Grand River, which could pose hazards to navigation in the area. Any commercial vessel of 20 meters or more in length (65.6 ft.) desiring to transit the regulated area may do so only with the approval of the Coast Guard Patrol Commander (Commanding Officer, U.S. Coast Guard Station, Grand Haven, MI).

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Temporary Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 would be amended to add a temporary § 100.35–T0914 to read as follows:

§ 100.35 T0914 Coast Guard Festival Fireworks, Grand River, Grand Haven Harbor, Grand Haven, MI.

(a) *Regulated Area.* That portion of the Grand River, Grand Haven, MI, from a north-south line drawn from the North Pierhead Light Number 1 (LLNR 18045) on the north to the South Pierhead Entrance Light (LLNR 18035) on the south, thence down river to the US 31 Bascule Bridge (mile 2.89).

(b) *Special Local Regulations.* (1) The Coast Guard will be regulating navigation and anchorage in the above area by commercial vessel traffic of 20 meters or more in length (65.6 ft.), from 3 p.m. (e.d.s.t.), 3 August 1991 until 3 a.m. (e.d.s.t.), 4 August 1991. Commercial vessels of 20 meters or more in length (65.6 ft.), with a need to transit the regulated area during the above times shall provide prior notification to the Coast Guard Patrol Commander. Upon granting approval, an escort will be provided.

(2) There will be numerous white buoys, designating an "Authorized Anchorage Area for Small Craft", in the vicinity of Waterfront Stadium, (approximate mile 1.1).

(3) The operation of the US 31 Bascule Bridge (mile 2.89) will be regulated from 9 p.m. (e.d.s.t.) until 11 p.m. (e.d.s.t.) on the 3rd of August 1991.

(4) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Any commercial vessel of 20 meters or more in length (65.6 ft.) desiring to transit the regulated area may do so only with the approval of the Patrol Commander and when so directed by that officer.

(5) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result

in expulsion from the area, citation for failure to comply, or both.

(6) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

Dated: June 28, 1991.

G.A. Penington,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 91-16634 Filed 7-11-91; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[Regulation 91-13]

COTP Louisville, KY; Safety Zone Regulations: Louisville, KY

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone for the Ohio River, mile 537.0 to 538.0. The zone is needed to protect all vessels and spectators from a safety hazard associated with a fireworks display sponsored by the Vevay "Always a River" project. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation becomes effective at 8:30 p.m. e.s.t. on 27 July 1991. It terminates at 10:30 p.m. e.s.t. on 27 July 1991, unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: CWO R.L. Johnson (502) 582-5194.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication due to the short notice of the incident. Publishing an NPRM and delaying its effective date would be contrary to the public intere.s.t. since immediate action is needed to respond to potential hazards to the vessels involved.

Drafting Information

The drafter of this regulation is CWO R.L. Johnson, project officer for the Captain of the Port.

Discussion of Regulation

The event requiring this regulation will begin on 27 July 1991 at 8:30 p.m. e.s.t. and end on 27 July 1991 at 10:30 p.m. e.s.t.. The fireworks display will take place at mile 537.5 on the Ohio River. The river closure is needed to protect river traffic and spectators.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security Measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5.

2. A new § 165.T02040 is added to read as follows:

§ 165.T02040 Safety Zone: All waters of the Ohio River from Mile 537.0 to 538.0.

(a) Location. The following area is a safety zone: All waters of the Ohio River Mile 537.0 to 538.0.

(b) Effective Date. This regulation becomes effective at 8:30 p.m. e.s.t. on 27 July 1991. It terminates at 10:30 p.m. e.s.t. on 27 July 1991, unless sooner terminated by the Captain of the Port.

(c) Regulations:

(1) In accordance with the general regulations in 165.23 of this part, entry into zone is prohibited unless authorized by the Captain of the Port.

(2) The Captain of the Port's representative may be contacted on VHF radio Channel 16 during the event.

Dated: June 27, 1991.

A.D. Guerrero,

Alternate Captain of the Port Louisville, Kentucky.

[FR Doc. 91-16637 Filed 7-11-91; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-8; FCC 91-182]

Television Satellite Stations Review of Policy and Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action, a Report and Order, revises the Commission's policy and rules regarding television satellite stations. In 1987, the Commission initiated this proceeding with a Notice of Inquiry and Notice of Proposed Rule Making ("Notice"), 52 FR 7282 (March 10, 1987). The Notice sought comment on proposals to reform the authorization process. Recently, the Commission continued this inquiry in a Further Notice of Proposed Rule Making ("Further Notice"), 55 FR 39021 (September 24, 1990). The Further Notice requested comment on alternatives to the current approach to examining television satellite applications. This Report and Order resolves the issues raised by the Notice and Further Notice, by adopting a presumption that favors grant of satellite applications if the following three criteria are met: (1) There is no City Grade overlap between the parent and the satellite; (2) the proposed satellite would provide service to an underserved area; and (3) no alternative operator is ready and able to construct or to purchase and operate the satellite as a full-service station.

EFFECTIVE DATE: August 14, 1991.

FOR FURTHER INFORMATION CONTACT: David E. Horowitz or Kathleen O'Brien Ham, Mass Media Bureau, Policy and Rules Division (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in MM Docket No. 87-8, adopted June 13, 1991, and released July 8, 1991. The complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC 20554, and also may be purchased from the Commission's copy contractor, Downtown Copy Center (202) 452-1422, 1114 21st Street, NW., Washington, DC 20036.

Syncpsis of Report and Order

1. Television satellite stations are full power terrestrial broadcast stations authorized under part 73 of the Commission's Rules to retransmit all or part of the programming of a parent station that is ordinarily commonly owned. On a weekly basis, television statellites have been limited to locally originating no more than five percent of their programming. Satellite stations are generally exempt from the ownership restrictions set forth in § 73.3555 (a)-(d) of the Commission's Rules. The Commission has reviewed television satellite applications on a case-by-case basis to determine whether "common ownership, operation or control of the stations in question would be in the public interest."

2. The Further Notice proposed several alternative approaches to evaluating television satellite

applications. One approach would retain the existing *ad hoc* system of examining television satellite applications. A second approach would slightly modify this *ad hoc* system by refining the factors considered under this system to afford applicants a higher degree of certainty. Accordingly, the Commission sought comment on whether it should continue to weigh all of the factors used in examining satellite applications, whether the Commission should also examine additional factors, and whether the factors should be ranked in order of importance. As a third approach, the Further Notice suggested that the Commission adopt an analysis that would define a fixed class of circumstances under which authorization to operate as a satellite would be presumptively in the public interest. The Commission proposed that under such an approach, applications not presumptively in the public interest would continue to be examined on a case-by-case basis.

3. The Commission hereby revises its policy on television satellite stations and amends the relevant portion of the Commission's Rules (47 CFR 73.3555, Note 5). Under the revised policy, applicants for television satellite status will be entitled to a presumption that the proposed satellite application is in the public interest if the applicant meets the following three criteria: (1) There is no City Grade overlap between the parent and the satellite; (2) the proposed satellite would provide service to an underserved area; and (3) no alternative operator is ready and able to construct or to purchase and operate the satellite as a full-service station.

4. The first showing needed to qualify for the presumption is a demonstration that there is no City Grade contour overlap between the parent and the satellite station. Overlapping Grade A and Grade B contours between parent and satellite stations may therefore exist, but only to the extent that the City Grade contours of the two stations do not intersect. This approach will facilitate satellite service to areas with a demonstrated need for such service, yet will protect our diversity and competition goals in the core market areas of the stations concerned, by precluding overlap of the stations' principal community contours. The second showing an applicant must make to trigger the presumption is that the proposed satellite would provide service to an underserved area. This requirement reflects the Commission's traditional concern that television satellites be approved for areas that have little or no existing television service. The final showing an applicant must make for the presumption to apply is that no alternative operator that does not present a conflict with the multiple ownership restrictions is ready and able to construct or to purchase and operate the proposed satellite as a full-service station. Although the Commission propose no specific factors for this showing, the Commission would require some specific evidence to support the applicant's contention. Such evidence might include listing the station with a broker, the number of resulting inquiries or lack of them, and the reasons why any serious negotiations did not lead to sale.

5. The Commission has chosen to adopt a presumption for the following reasons. First, adoption of a presumption will provide applicants with a more predictable outcome than the current case-by-case approach permits. Unlike the current approach, the Commission's presumption provides a fixed standard by which most applicants will be able to gauge whether their proposals will be approved. Thus, the Commission is convinced that a presumption will allow potential applicants to plan their television satellite proposals with a greater degree of foreknowledge and certainty. Second, this approach will expedite the review of television satellite applications. Applications that satisfy the presumption and are unrebutted will be approved under this new approach. The Commission believes that the types of television satellite proposals that have been approved under its *ad hoc* system of review generally will continue to be approved under its new approach.

6. The Commission also abolishes its policy of limiting the amount of local programming that television satellite stations may originate. Television satellite operators will be free to broadcast as much local programming as they are capable of providing. The Commission believes that this action will promote the goals of diversity and localism in areas served by television satellite operations. The Commission recognizes that a consequence of eliminating the local program origination cap is that it abolishes the benchmark for determining when a satellite becomes a non-satellite. Accordingly, the Commission will require all applicants seeking to transfer or assign satellite stations in the future to demonstrate that the conditions warranting satellite status under this Order prevail at the time of transfer or assignment. Finally, the Commission notes that the elimination of the 5 percent benchmark raises questions concerning the continued advisability of exempting satellite stations from the limitations of the national multiple ownership rules (47 CFR 73.3555(d)). Accordingly, the Commission intends in the near future to issue a further notice in this proceeding to examine this matter.

Final Regulatory Flexibility Statement

7. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, the Commission concludes that the adopted rule and policy changes of this Order will provide more definitive guidance to satellite applicants while preserving important policy considerations. The Commission considered several alternative proposals, described above, and, for the reasons also stated above, selecting the approach that would best serve the public interest.

8. The Secretary shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. section 601 *et seq.* (1981).

9. *Accordingly, it is ordered,* That pursuant to authority contained in sections 4 and 303 of the Communications Act of 1934, 47 U.S.C. section 154 and 303, as amended, part 73 of the Commission's Rules is amended as set forth below.

10. *It is further ordered,* That the amendment to 47 CFR part 73 adopted in this Report and Order will be effective August 14, 1991 and that these changes will be applied to television satellite applications pending as of this effective date.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Amendatory Text

47 CFR part 73 is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. Section 73.3555 is amended by revising Note 5 to read as follows:

§ 73.3555 Multiple ownership.

* * * * *

Note 5: Paragraphs (a) through (d) of this section will not be applied to cases involving television stations which are "satellite" operations. Such cases will be considered in accordance with the analysis set forth in the Report and Order in MM Docket No. 87–8, FCC 91–182 (released July 8, 1991) in order to

determine whether common ownership, operation, or control of the stations in question would be in the public interest. An authorized and operating "satellite" television station the Grade B contour of which overlaps that of a commonly owned, operated, or controlled "non-satellite" parent television broadcast station, or the Grade A contour of which completely encompasses the community of publication of a commonly owned, operated, or controlled daily newspaper, or the community of license of a commonly owned, operated, or controlled AM or FM broadcast station, or the community of license of which is completely encompassed by the 2 mV/m contour of such AM broadcast station or the 1 mV/m contour of such FM broadcast station may subsequently become a "non-satellite" station under the circumstances described in the aforementioned Report and Order in MM Docket No. 87–8. However, such commonly owned, operated, or controlled "non-satellite" television stations and AM or FM stations with the aforementioned community encompassment, may not be transferred or assigned to a single person, group, or entity except as provided in Note 4 of this section. Nor shall any application for assignment or transfer concerning such "non-satellite" stations be granted if the assignment or transfer would be to the same person, group or entity to which the commonly owned, operated, or controlled newspaper is proposed to be transferred, except as provided in Note 4 of this section.

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–16615 Filed 7–11–91; 8:45 am.]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 56, No. 134
Friday, July 12, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM-60; Notice No. SC-91-8-NM]

Special Conditions: Embraer Model CBA-123 Airplane; Aft Fuselage Design Structural Requirements To Prevent Propeller Strike, Eight-Pound Bird Strike Protection for the Aft Fuselage Mounted Powerplant Structural System and Propellers, Propeller Blade Fire Resistance, Propulsion System Susceptibility To Damage From Loss of Airplane Components and Shed Ice, and Propeller Ground Clearance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes additional special conditions for the Embraer Model CBA-123 airplane for aft fuselage design structural requirements to prevent propeller strike, eight-pound bird strike protection for the aft fuselage mounted powerplant structural system and propeller, propeller blade fire resistance, propulsion system susceptibility to damage from loss of airplane components and shed ice, and propeller ground clearance. Final special conditions have already been issued for this airplane to protect high-technology digital avionics from the effects of lightning and high-intensity radiated fields (HIRF). This airplane will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards of part 25 of the Federal Aviation Regulations (FAR). This notice proposes additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards of part 25. Further special conditions will be developed at a later date on engine cowl retention.

DATES: Comments must be received on or before August 26, 1991.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM-7), Docket No. NM-60, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM-60. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Henry Jenkins, Standardization Branch, ANM-113, Transport Airplane Directorate, Aircraft Certification Service, FAA, 1601 Lind Ave. SW., Renton, Washington, 98055-4056, telephone (206) 227-2141.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date forcomments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-60." The postcard will be date/time stamped, and returned to the commenter.

Background

On July 31, 1986, Embraer applied for a Type Certificate for their new Model CBA-123 airplane. This 19 passenger transport category airplane has a unique aft mounted turboprop propulsion system installation with pusher propellers. The propulsion system of the CBA-123 incorporates two Garrett TPF351-20 turboprop engines and two Hartzell six-bladed propellers. The powerplant nacelles are pylon-mounted in the aft portion of the fuselage.

Type Certification Basis

Under the provisions of § 21.17 of the FAR, Embraer must show that the Model CBA-123 meets the applicable requirements of Subchapter C in effect on the date of application for that certificate unless: (1) Otherwise specified by the Administrator; or (2) Compliance with later effective amendments is elected or required under § 21.17; and (3) Special conditions are prescribed by the Administrator.

Based on the provisions of § 21.17(a)(1), the Model CBA-123 would be required to comply with Part 25 as amended by Amendment 25-60. However, Embraer has elected to comply with §§ 25.571(e)(2) and 25.905(d) as amended by Amendment 25-72. Part 34 (formerly SFAR 27) and Part 36 as amended by the time of awarding the type certificate must also be met.

The special conditions which may be developed as a result of this notice will form an additional part of the type certification basis.

Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards required by § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and may become part of the type certificate basis in accordance with § 21.101.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25 as amended) do not contain adequate or appropriate safety standards for the Model CBA-123

because of a novel or unusual design feature, special conditions are prescribed under § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

Novel or Unusual Design Features

The Embraer Model CBA–123 will incorporate the following novel or unusual design features:

1. Aft pylon mounted turbopropeller engines. This engine configuration has not previously been certified in the transport category.
2. Pusher propeller installation. This propeller configuration has not previously been certified in the transport category.

Conclusion

This action affects only certain novel or unusual design features on one model series of airplanes. It is not a rule of general applicability, and it affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for this special condition is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97 449, January 12, 1983).

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Embraer Model CBA–123 airplane:

1. Aft Fuselage Design Structural Strength Requirements To Prevent Propeller Strike

a. Embraer must determine whether it is possible for the airplane fuselage aft structure to strike the ground due to maximum possible pitch angles during takeoff and landing. For the landing condition, it must also establish whether it is possible for the aft structure to strike the ground before the main landing gear touches the ground, which would represent a worst case condition.

b. If an aft structure ground strike is possible, worst case structural loads must be established. For landing ground strike loads, a sink rate of 12 feet per second must be assumed.

c. If an aft structural ground strike is possible, adequate structural design and strength must be provided so that worst case loads from an aft structure ground strike will not cause deformation and/or failure such that a propeller ground strike can occur.

Discussion: The existing structural requirements in the FAR do not take into account aft fuselage structural strength requirements needed in the event of a dynamic, hard aft tail strike that could occur during takeoff or landing, to prevent deformation and/or failure and subsequent propeller ground strike for aft mounted turboprop propulsion systems with pusher propellers. Propeller ground strike could in turn cause propeller blades to break off and strike the rudder and elevator control surfaces causing loss of control authority.

2. Eight-Pound Bird Strike Protection for the Aft Fuselage Mounted Power Plant Structural System and Propellers

The nacelle, pylon, and propellers must be designed to assure capability of continued safe flight and landing of the airplane after impact with an 8 lb. bird when the velocity of the airplane (relative to the bird along the airplane's flight path) is equal to V_c at sea level, selected under § 25.335(a).

Discussion: Section 25.571(e) requires that the airplane must be capable of successfully completing a flight during which likely structural damage occurs as a result of impact with a 4-lb. bird with the exception of the empennage structure which must withstand an 8-lb. bird strike per § 25.631. For the Model CBA–123, the entire propulsion assembly is in close proximity to the empennage. Failure of the nacelles, pylons, and/or propellers due to bird strike could in turn cause catastrophic failure of the elevator and rudder controls causing loss of pitch and yaw authority. One possible scenario is a birdstrike on a pylon causing it to fail, allowing the engine and rotating propeller to fold back on the empennage and cut it up. Another possible scenario is a birdstrike on the nacelle causing it to detach, strike the propellers, which in turn detach and strike the empennage and cause loss of control.

3. Propeller Blade Fire Resistance

The propeller blades and blade retention system of this pusher-mounted turbopropeller engine must be at least fire resistant or shielded so that they are capable of withstanding the effects of fire until an engine fire can be detected and the engine shut down.

Discussion: The pusher mounted propeller and propeller hub design is susceptible to damage from engine fires. This proposed special condition would ensure that a blade would not be released while the engine is still running, presenting an additional hazard.

4. Propulsion System Susceptibility to Damage From Loss of Airplane Components and Shed Ice

a. The airplane design must be such that it minimizes the possibility of the loss of components (e.g. access panels, tire treads, and landing gear components) forward of the powerplant installation which are larger and/or heavier than those accounted for during type certification

b. There must be no source of pieces of shed ice located ahead of the engine inlet plane which are larger than those tested or otherwise accounted for during the type certification of the engine and propeller in accordance with the provisions of part 33 and part 35.

Discussion: The ingestion of foreign objects in flight, other than birds, is not a concern with conventional turbopropeller-powered airplanes because the propellers of such airplanes are not located behind any source of such foreign objects. Although there are sources of such objects located ahead of aft-mounted turbofan engine installations, current requirements of parts 25 and 33 provide an adequate level of safety. Due to the larger diameter of the Model CBA–123 pusher propeller, it presents a much bigger target for lost components such as service doors, access panels and tire treads, and also for shed ice. Therefore, design precautions need to be taken to minimize the possibility of loss of airplane components and/or shed ice larger than those tested or otherwise accounted for during type certification of the propulsion unit.

5. Propeller Ground Clearance

It must be shown by analysis or test that there will be a positive clearance between each propeller tip and the ground when the airplane:

a. Is loaded to the maximum ramp weight, and

b. Is pitched nose up to the point where the tail skid or aft fuselage is touching the ground, and

c. Is rolled along the lateral axis to the greatest extent expected during takeoff and landing, and

d. The main landing gear tire on the low wing side is fully deflated, and

e. The main landing gear strut on the low wing side is fully compressed, and

f. The propeller on the low wing side is in the most adverse pitch position.

Discussion: In an airplane with conventionally mounted engines, a tail down attitude increases propeller tip ground clearance. In the CBA–123, a tail down attitude decreases ground clearance and special design considerations must be applied to prevent propeller blade strike in a tail down attitude combined with various other adverse conditions that could occur simultaneously and negate propeller ground clearance.

Issued in Renton, Washington, on June 18, 1991.

Darrell M. Pederson,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–16601 Filed 7–11–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–120–AD]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes, Excluding Model A300 B4–600 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to Airbus Industrie Model A300 series airplanes, which would require certain structural inspections and modifications. This proposal is prompted by reports of recent incidents involving fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their economic design goal. These conditions, if not corrected, could result in degradation in the structural capability of the affected airplanes. This proposal also reflects the FAA's decision that long term continued operational safety should be assured by actual modification of the airframe, where feasible, rather than only by repetitive inspections for known service problems.

DATES: Comments must be received no later than August 27, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 91–NM–120–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM–113; telephone (206) 227–2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91–NM–120–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

In April 1988, a high-cycle Boeing Model 737 suffered major structural damage in flight. Investigation revealed that the airplane had numerous fatigue cracks and a great deal of corrosion. Subsequent inspections conducted by the operator on the high-cycle airplanes in its fleet revealed that two other airplanes had extensive fatigue cracking and corrosion. These airplanes were taken out of service.

This accident prompted the FAA to sponsor a conference on aging airplanes in June 1988, which was attended by members of the aviation industry, other regulatory authorities, and the general public. From the exchange that took place at the conference, it became obvious that, because of the huge increase in air travel, the relatively slow production rate for new airplanes, and the apparent economic feasibility of operating older technology airplanes, older airplanes will continue to be operated rather than be retired. Because of the problems revealed by the accident described above, it was generally agreed that increased attention needed to be focused on this aging fleet to maintain its continued operational safety.

The Air Transport Association (ATA) of America and the Aerospace Industries Association (AIA) of America are committed to identifying and implementing procedures to ensure continuing structural airworthiness of aging transport category airplanes. An Airworthiness Assurance Task Force, with representatives from the aircraft operators, manufacturers, regulatory authorities, and other aviation representatives, was established in August 1988. The objective of the Task Force was to sponsor "Working Groups" to (1) select service bulletins, applicable to each airplane model in the transport fleet, to be recommended for mandatory modification of aging airplanes, (2) develop corrosion-directed inspections and prevention programs, (3) review the adequacy of each operator's structural maintenance program, (4) review and update the Supplemental Structural Inspection Documents (SSID), and (5) assess repair quality.

The Working Group assigned to review Airbus Industrie Model A300 series airplanes completed its work related to Item (1), above, and has made several recommendations for various structural inspections and modifications to ensure continued structural integrity of these airplanes. Completing these inspections/modifications will reduce the possibility of major structural failure on older airplanes.

The Working Group has recommended 13 service bulletins to the FAA for mandatory inspection and/or modification actions to ensure the successful long term operation of the Model A300 series airplanes. The FAA has concurred with the Working Group's recommendations and has determined that AD action to mandate the inspections/modifications is warranted to assure the continued airworthiness of the Model A300 fleet.

Airbus Industrie has issued the following Service Bulletins to address the "Aging Structure Defect Prevention Program:"

(1) A300–53–103, Revision 4, dated June 30, 1983, which describes procedures for repetitive inspections to detect broken or cracked attachment fittings in the junction seat tracks and the dummy seat tracks, and repair, if necessary.

(2) A300–53–126, Revision 7, dated November 11, 1990, which describes procedures to reinforce the longitudinal joint, Frames 72 through 80 between left-hand and right-hand Stringer 1; and reinforce Frames 72 through 73 between left-hand and right-hand Stringer 28 and left-hand and right-hand Stringer 29.

(3) A300–53–146, Revision 6, November 9, 1990, which describes procedures to install additional riveting of bonded stringers between Frames 26 and 31 on the right-hand side of the fuselage in order to improve the attachment of certain bonded stringers.

(4) A300–53–162, Revision 4, dated November 12, 1990, which describes procedures for repetitive detailed visual and eddy current inspections to detect cracks, and repetitive detailed visual inspections to detect damaged fasteners in the left and right doubler angles, and repair, if necessary.

(5) A300–53–196, Revision 1, dated November 12, 1990, which describes procedures for repetitive ultrasonic or eddy current inspections to detect cracked fastener holes in Frame 47 (left and right), and repair, if necessary.

(6) A300–53–225, Revision 2, dated May 30, 1990, which describes procedures for repetitive inspections to detect cracks in the longitudinal lap joint at Stringer 51 (left and right) between Station 4467/Frame 72 and Station 4944/Frame 80, and repair, if necessary.

(7) A300–53–226, Revision 4, dated November 12, 1990, which describes procedures to modify corrosion protection in the aft pressure bulkhead area.

(8) A300–53–278, dated November 12, 1990, which describes procedures for repetitive eddy current inspections to detect cracks in the rear lower corner of the flight compartment aft window, and repair, if necessary.

(9) A300–54–045, Revision 4, dated January 31, 1990, which describes procedures for repetitive visual inspections to detect cracks and loose bolt/nut assemblies between Rib 8 and Rib 18, and repair, if necessary.

(10) A300–54–060, Revision 2, dated September 7, 1988, and Change Notice 2.A., dated February 13, 1990, which describe procedures for repetitive visual inspections to detect cracked or broken fan reverser cowl hinge fittings and bolts on airplanes equipped with General Electric engines, and repair, if necessary.

(11) A300–54–063, Revision 1, dated April 22, 1987, and Change Notice 1.A., dated February 13, 1990, which describe procedures for repetitive visual inspections to detect cracks and damaged bolt heads in the fan reverser cowl fittings on airplanes equipped with Pratt and Whitney engines, and repair, if necessary.

(12) A300–54–066, Revision 1, dated February 15, 1989, and Change Notice 1.A., dated February 13, 1990, which describe procedures for repetitive visual inspections to detect cracks in the skin panel (outboard and inboard sides) around the first core cowl fitting at Rib 6, and repair, if necessary. If cracks are found, the service bulletin also describes procedures for repetitive visual inspections of the skin panel (outboard and inboard sides) around the second core cowl fitting at Rib 9, and repair, if necessary.

(13) A300–57–165, dated May 21, 1990, which describes procedures for modification of the wing structures to repair cracks by the cold working of the holes in the front spar bottom boom at the termination plate for the bottom Stringer 8 run out between Ribs 10 and 11.

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, has classified these service bulletins as mandatory, and has issued Airworthiness Directive 90–222–116(B) addressing these subjects.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since fatigue cracking and corrosion are likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require inspections, repairs, and modifications in accordance with the service bulletins previously described.

The proposed compliance time for accomplishing the structural modifications and inspections is based on the recommendations of the Airbus Industrie Model A300 Airworthiness Assurance Task Force (Working Group). Its recommendation is based on a review of fatigue inspections, the ability of the manufacturer to provide parts, and the time necessary to incorporate the modifications.

It is estimated that 66 airplanes of U.S. registry would be affected by this AD, that it would take approximately 512 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. The estimated cost for required parts is $74,350. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,765,660.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket No. 91–NM–120–AD.

Applicability: All Model A300 series airplanes, excluding Model A300 B4–600 series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent degradation of the structural capability of the airplane, accomplish the following:

(a) Accomplish the inspections and modifications contained in the Airbus Industrie Service Bulletins listed below, pro-

to or at the thresholds identified in each of those service bulletins, or within 1,000 landings or 12 months after the effective date of this AD, whichever occurs later. Required inspections must be repeated thereafter at intervals not to exceed those specified in the corresponding service bulletin for the inspection.

(1) A300–53–103, Revision 4, dated June 30, 1983;

(2) A300–53–126, Revision 7, dated November 11, 1990;

(3) A300–53–146, Revision 6, dated November 9, 1990;

Note: This service bulletin provides for a compliance threshold of within 5 years after the date of issuance of French AD 90–222–116(B), issued on December 12, 1990, the accomplishment of which is required by AD 85–07–09, Amendment 39–5033.

(4) A300–53–162, Revision 4, dated November 12, 1990;

(5) A300–53–196, Revision 1, dated November 12, 1990;

Note: This service bulletin provides for a compliance threshold of within 6,000 landings after accomplishment of service bulletin 53–194, accomplishment of which is required by AD 87–04–12, Amendment 39–5536.

(6) A300–53–225, Revision 2, dated May 30, 1990;

(7) A300–53–226, Revision 4, dated November 12, 1990;

(8) A300–53–278, dated November 12, 1990;

(9) A300–54–045, Revision 4, dated January 31, 1990;

(10) A300–54–060, Revision 2, dated September 7, 1988, and Change Notice 2.A. dated February 13, 1990.

(11) A300–54–063, Revision 1, dated April 22, 1987, and Change Notice 1.A., dated February 13, 1990;

(12) A300–54–066, Revision 1, dated February 15, 1989, and Change Notice 1.A., dated February 13, 1990; and

(13) A300–57–165, dated May 21, 1990.

(b) If any of the discrepant conditions identified in the service bulletins are found as a result of the inspections required by this AD, the corresponding corrective action specified in the service bulletins must be accomplished prior to further flight.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue S.W., Renton, Washington.

Issued in Renton, Washington, on June 25, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–16602 Filed 7–11–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

(Docket No. 91–NM–122–AD)

Airworthiness Directives; British Aerospace Model BAe 146–100A, 146–200A, and 146–300A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146–100A, 146–200A, and 146–300A series airplanes, which would require a one-time visual inspection to detect chafing of extinguisher pipe and clamp assemblies in the engine nose cowls, and repair or replacement of damaged extinguisher pipe or clamp assemblies, if necessary. This proposal is prompted by a recent report of an extinguisher pipe in an engine nose cowl assembly being damaged by chafing. This condition, if not corrected, could result in the engine fire extinguisher medium not being discharged at the proper locations in the event of an engine fire.

DATES: Comments must be received no later than September 3, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 91–NM–122–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM–113; telephone (206) 227–2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participipate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91–NM–122–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain British Aerospace Model BAe 146–100A, 146–200A, and 146–300A series airplanes. There has been a recent report of an extinguisher pipe in an engine nose cowl assembly that had been damaged by chafing due to inadequate clearance between the three pipe assemblies and the adjacent equipment and structure. This condition, if not corrected, could result in the engine fire extinguisher medium not being discharged at the proper locations in the event of an engine fire.

British Aerospace has issued Inspection Service Bulletin 26–A29, Revision 2, dated January 14, 1991, which describes procedures for a one-time visual inspection to detect chafing of extinguisher pipe and clamp assemblies in the engine nose cowls, and to ensure that adequate clearance exists between the three pipe assemblies and the adjacent equipment and structure, and repair or replacement

of damaged extinguisher pipe or clamp assemblies, if necessary. The United Kingdom CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require a one-time visual inspection to detect chafing of extinguisher pipe and clamp assemblies in the engine nose cowls, and to ensure that adequate clearance exists between the three pipe assemblies and the adjacent equipment and structure, and repair or replacement of damaged extinguisher pipe or clamp assemblies, if necessary, in accordance with the service bulletin previously described.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

It is estimated that 74 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $8,140.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Docket No. 91–NM–122–AD.

Applicability: Model BAe 146–100A series airplanes, Serial Numbers up to and including E1152; Model BAe 146–200A series airplanes, Serial Numbers up to and including E2156; and Model BAe 146–300A series airplanes, Serial Numbers up to and including E3157; certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To ensure engine fire extinguisher medium is discharged to proper locations in the event of an engine fire, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a visual inspection to detect chafing of extinguisher pipe and clamp assemblies between the two fire extinguisher bottles in engine nose cowls; and ensure that adequate clearance exists between the three pipe assemblies and adjacent equipment and structure; in accordance with the instructions in British Aerospace Inspection Service Bulletin 26–A29, Revision 2, dated January 14,1991.

(b) Prior to the installation of any nose cowl or engine/nose cowl combination on an operational airplane, perform a visual inspection to detect chafing of extinguisher pipe and clamp assemblies between the two fire extinguisher bottles in engine nose cowls; and ensure that adequate clearance exists between the three pipe assemblies and adjacent equipment and structure; in accordance with the instructions in British Aerospace Inspection Service Bulletin 26–A29, Revision 2, dated January 14, 1991.

(c) If any damaged extinguisher pipe and clamp assembly is identified as a result of the inspection required by paragraph (a) or (b) of this AD, prior to further flight, repair or replace the damaged assembly in accordance with instructions in British Aerospace Inspection Service Bulletin 26–A29, Revision 2, dated January 14, 1991.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, D.C. 20041–0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on July 1, 1991.

Darrell M. Pederson,

Acting Manager Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–16605 Filed 7–11–91; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 91–ASW–06]

Airworthiness Directives; Messerschmitt-Bolkow-Blohm (MBB) Model BO105C and BO105S Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD) which currently requires the installation of a continuous ignition system on all MBB Model BO105C and BO105S series helicopters that operate in snow conditions. The proposed new AD is needed to: clarify compliance times; add new information contained in the latest rotorcraft flight manual revision; clarify the inspection requirements following operation in snow conditions; and add removal and reinstallation requirements for the engine inlet deflector shield. The intended effect of the AD is to prevent possible engine flameouts, loss of engine power, and loss of control of the helicopter.

DATES: Comments must be received on or before August 26, 1991.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Rules Docket, Office of the Assistant Chief Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76193–0007. Comments must be marked: Docket Number 91–ASW–06. Comments may be inspected at the above location in room 158, Building 3B, between the

hours of 8 a.m. and 4 p.m., except Federal holidays.

The applicable service information may be obtained from: MBB Helicopter Corporation, 900 Airport Road, P.O. Box 2349, West Chester, PA 19380, or may be examined in the Rules Docket.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Twa, FAA, Rotorcraft Standards Staff, ASW-110, Fort Worth, Texas 76193-0112; telephone (817) 624-5158.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before any final action is taken on the proposed rule. The proposal contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments in the Office of the Assistant Chief Counsel, 4400 Blue Mound Road, room 158, Building 3B, Fort Worth, Texas, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket Number 91-ASW-06. The postcard will be date/time stamped and returned to the commenter.

After issuing Airworthiness Directive AD 90-23-08, Amendment 39-6778 (55 FR 46200, November 2, 1990) which currently requires installation of a continuous ignition system on all MBB Model BO105C and BO105S series helicopters that operate in snow conditions, the FAA has determined that additional instructions are needed relative to engine inlet deflector shield removal and reinstallation and that a later flight manual supplement needs to be included. In addition, the proposed AD references the latest Rotorcraft Flight Manual revision (2/1/91) which requires a check of the compressor inlet by a trained pilot or mechanic, clarifies the removal and reinstallation requirements for the engine inlet deflector shield, clarifies compliance requirements, and provides for an alternate means of compliance.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this AD involves approximately 36 aircraft. It is estimated that it would take 4.5 manhours per helicopter at a labor cost of $55 per manhour to accomplish this AD. The total fleet cost will be approximately $8,910. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-6778, AD 90-23-03 (55 FR 4620, November 2, 1990) and adding the following new AD:

Messerschmitt-Bolkow-Blohm (MBB): Docket No. 91-ASW-06.

Applicability: All MBB Model B0105C and B0105S series helicopters, certificated in any category.

Compliance: Required prior to operation in snow conditions after the effective date of this AD, unless already accomplished.

To prevent engine flameout, resulting from ingestion of layers of wet snow in engine inlets, accomplish the following:

(a) Install a continuous ignition system in accordance with MBB Service Bulletin, SB-BO 105-80-108, "Optional Equipment Retrofit of Continuous Ignition System," dated May 11, 1990.

(b) Incorporate into the applicable Rotorcraft Flight Manual (RFM) the approved flight manual Temporary Revision No.: 2/17, dated February 1, 1991.

(c) The engine inlet deflector shield may be removed on rotorcraft with serial numbers (S/N's) S-450 and lower if the provisions of MBB Service Bulletin 60-37, Rev. 3, dated January 15, 1982, have not been complied with, and the outside air temperature (OAT) is +30 degrees C or higher. Rotorcraft with S/N's S-451 and higher, and all other rotorcraft with the changes required by MBB Service Bulletin 60-37, Rev. 3, dated January 15, 1982, incorporated, must have the engine inlet deflector shield installed at all times, unless its removal has been approved by the FAA. Regardless of the rotorcraft serial numbers, when operation in snow is expected, the engine inlet deflector shield shall be installed.

(d) An alternate method of compliance or adjustment of the compliance times, which provides an acceptable level of safety, may be used if approved by the Manager, Rotorcraft Standards Staff, FAA, Fort Worth, Texas 76193-0110, telephone (817) 624-5110.

Issued in Fort Worth, Texas, on May 24, 1991.

James D. Erickson,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 91-16603 Filed 7-11-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-ANE-23]

Airworthiness Directives; Teledyne Continental Motors (TCM) Engine Models

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain TCM engine models, which would require replacement of Champion oil filters Parts Numbers (P/N) CH48108 and CH48109 manufactured between September 1988 and January 1990. This proposal is prompted by reports of the collapse of the oil filter element. This condition, if not corrected, can result in loss of oil pressure which may cause engine failure or power loss and possible aircraft damage.

DATES: Comments must be received no later than August 12, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Attn: Rules Docket No. 91–ANE–23, 12 New England Executive Park, Burlington, Massachusetts 01803–5299, or deliver in duplicate to room 311, at the above address.

Comments may be inspected at the above location between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service information may be obtained from Champion Aviation Products, 330 Pelham Road, suite 200, Building B, Greenville, South Carolina 29615, or Teledyne Continental Motors, P.O. Box 90, Mobile, Alabama 36601. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Ms. L. Juanita Craft-Lloyd, Aerospace Engineer, Propulsion Branch, Atlanta Aircraft Certification Office, Small Plane Directorate, FAA, Central Region, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349, telephone (404) 991–3810.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the rules docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 91–ANE–23." The postcard will be date/time stamped and returned to the commenter.

Discussion

On December 22, 1990, and January 16, 1991, an operator experienced loss of oil pressure on an engine of a Cessna 340. These two events occurred within 1–½ flight hours of each other. An investigation revealed a collapsed oil filter media had restricted oil flow to the engines. The filter elements of certain Champion Aviation Products, oil filters P/N CH48108 and CH48109, have been found to collapse under certain conditions, particularly cold weather starts. It has been reported that approximately 20 cases of this nature have occurred. When the filter element collapses, the oil flow to the engine is restricted, oil pressure is reduced, and, if not detected, engine failure can result. This problem was caused by design changes introduced into the filter production line during the period September 1988 through January 1990.

Approximately 150,000 filters were produced during this period. The filter manufacturer has recovered approximately 70,000 to date through a voluntary recall process. There are approximately 60,000 TCM engines installed on U.S. registered aircraft which may have these installed. It is estimated that it would take 1 manhour per engine to accomplish the required action at an average labor cost of $55 per manhour. The cost of the required part is estimated to be $14.50 per engine. It is unknown how many of the suspect filters are still in service; however, using the above figures, the maximum total impact of this AD on U.S. operators is estimated to be $4,170,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes to amend 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Teledyne Continental Motors (TCM): (Docket No. 91–ANE–23) Applicability: TCM Models IO–360, L/TSIO–360, IO–346, L/IO–470, TSIO–470, IO–520, L/TSIO–520, 6–285, IO–550, GTSIO–520 series engines, which are installed on, but not limited to, certain Beech Bonanza models C33, E33, F33, S35, V35, A36, 36, A36TC, and B36TC, Musketeer model A23, Baron models C55, D55, E55, 58, and 58TC series airplanes; and on certain Cessna models R172K, 180 (Serial Numbers) (S/N) 53087 and up), 182 (S/N 67042 and up), P182 (S/N 00130 and up), 185 (S/N 03852 and up), 188 (S/N 03474 and up), T188 (S/N 03474 and up), 206 (S/N 05030 and up), 207 (S/N 05227 and up), T207 (S/N 05227 and up), 210 (S/N 63373–63375 and up), T210 (S/N 63373–63375 and up), P210 (S/N 278 and up), T303, 310, 320, P337, T337, 340, 401, 402, 414 series airplanes; and on certain Mooney Aircraft Corp. models M20K and M20K–252TSE series airplanes; and on certain Piper Pawnee model PA–36, Arrow model PA–28R–201T, Dakota model PA–28–201T, Malibu model PA–46–310P, and Seneca models PA–34–200T and PA–34–220T series airplanes; certificated in any category.

Compliance: Required as indicated unless previously accomplished.

To prevent operation with collapsed oil filter elements, which can result in loss of oil pressure, engine power loss or engine failure, and possible aircraft damage, accomplish the following prior to September 30, 1991:

(a) Inspect the engine oil filter and determine if the filter is a Champion Part No. (P/N) CH48108 or CH48109. If the filter is so identified, proceed to paragraph (b) of this AD.

(b) Inspect the engine oil filter and determine the date code of the filter printed on the side of the exterior. Remove any filter bearing any of the following date codes prior to further flight:

Date codes: All three-digit date codes with "9" as the third-digit, or date codes 3J8, 4J8, 1K8, 2K8, 3K8, 4K8, 2L8, 1M8, 3M8, 1A0 or 2A0.

(c) Filters identified with any of the date codes listed in paragraph (b) of this AD are not serviceable and cannot be returned to service.

(d) Replace any removed filter with Champion filter P/N CH48108 or CH48109 having date codes other than those listed in paragraph (b), or with any other FAA approved filter that is eligible for the applicable engines.

(e) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(f) Upon submission of substantiating data by an owner or operator through an FAA Inspector, (maintenance, avionics, operations, as appropriate) an alternate method of compliance with the requirements of this AD or adjustments of the compliance times specified in this AD may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request from Champion Aviation Products, 330 Pelham Road, Suite 200, Building B, Greenville, South Carolina 29615 or Teledyne Continental Motors, P.O. Box 90, Mobile, Alabama 36601. This information may be examined at the FAA, New England Region, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, Massachusetts.

Issued in Burlington, Massachusetts, on July 2, 1991.

Jack A. Sain,

Manager, Engine and Propeller Directorate Aircraft Certification Service.

[FR Doc. 91–16669 Filed 7–11–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI–189–84]

RIN 1545–AH46

Original Issue Discount; Treatment of Debt Instruments Purchased at a Premium

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations concerning the accrual of original issue discount by holders of debt instruments that are acquired at a premium or at an acquisition premium. In particular, these proposed regulations clarify the treatment of holders that acquire debt instruments in a debt-for-debt exchange.

DATES: Written comments, requests to speak and outlines of oral comments for the public hearing scheduled for Friday, August 23, 1991, must be received by August 12, 1991. See notice of hearing published elsewhere in this issue of the Federal Register.

ADDRESSES: Send comments, requests to speak, and outlines of oral comments to: Internal Revenue Service, P.O. Box 7604, Benjamin Franklin Station, Attn: CC:CORP:T:R (FI–189–84), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Robert N. Deitz, (202) 566–3803 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On April 8, 1986, the Federal Register published a notice of proposed rulemaking (51 FR 12022) relating to original issue discount under sections 1271 through 1275 and certain related provisions of the Internal Revenue Code (the "1986 proposed regulations"). Proposed § 1.1272–1 contains rules concerning the accrual of original issue discount. Proposed § 1.1275–1 provides certain definitions relating to original issue discount. This document incorporates and expands upon certain portions of those provisions, effective for debt instruments issued at a discount after July 1, 1982, and acquired on or after July 11, 1991.

Accrual of OID

In general, under section 1273(a)(1), a debt instrument is issued with original issue discount ("OID") if the debt instrument is issued for an amount that is less than the debt instrument's stated redemption price at maturity ("SRPM").

Under section 1272(a), the holder of a debt instrument issued with OID generally must include in income the OID that accrues on the debt instrument while held by that holder. However, under section 1272(c), if a holder purchases the debt instrument at a premium, i.e., for an amount that exceeds the debt instrument's SRPM, no OID is includible in the holder's income. In addition, under section 1272(a)(7), if a holder purchases the debt instrument at an acquisition premium, i.e., for an amount that is less than or equal to the debt instrument's SRPM but exceeds the instrument's issue price (increased by previously accrued OID), the amount of OID includible in the holder's income is reduced.

Creation of OID in Debt-for-Debt Exchanges as a Result of the Repeal of Section 1275(a)(4)

Prior to the Revenue Reconciliation Act of 1990 (Pub. L. No. 101–508, 104 Stat. 1388) (the "1990 Act"), former section 1275(a)(4) provided that the issue price of a debt instrument received in a debt-for-debt exchange in a reorganization could not be less than the adjusted issue price (as defined in former section 1275(a)(4)(B)(ii)) of the old debt instrument. Thus, a new debt instrument issued in a debt-for-debt exchange in a reorganization did not have OID unless the SRPM of the new debt instrument exceeded the adjusted issue price of the old debt instrument.

As a consequence of the repeal of section 1275(a)(4) by section 11325 of the 1990 Act, the issue price of a new debt instrument received in exchange for an old debt instrument in a reorganization is determined under either section 1273 or section 1274. Thus, the issue price of a new debt instrument may be less than the adjusted issue price of the old debt instrument, which may result in the creation of OID in a debt-for-debt exchange in which no OID would have arisen under prior law. See H.R. Rep. No. 881, 101st Cong., 2d Sess. 354 (1990).

If the issue price of the new debt instrument is also less than the holder's basis in the old debt instrument (which could be the case if the old debt instrument declined in value after the holder acquired it), the holder realizes a loss on the reorganization exchange under section 1001. Under sections 354 and 358, however, this loss is not recognized and the holder generally receives a basis in the new debt instrument equal to the holder's basis in the old debt instrument.

Thus, a holder may have a basis in the new debt instrument that is greater than the issue price of the new debt instrument. The purpose of these proposed regulations is to provide guidance on how the rules of section 1272(a)(7) and section 1272(c) apply to limit the amount of OID that must be included in income by a holder in these circumstances.

For debt instruments issued at a discount after July 1, 1982, and acquired on or after July 11, 1991, these proposed regulations incorporate and expand upon the portions of the 1986 proposed regulations that interpret and apply section 1272(a)(7) and section 1272(c). The rules of proposed §§ 1.1272–2 (b)(1), (b)(2), and (b)(3) are consistent with the corresponding provisions of the 1986 proposed regulations. As discussed under "Explanation of Provisions," below, the rules of proposed § 1.1272–2(b)(4), which are adopted pursuant to the regulatory authority of section 1275(d), extend certain rules for transferred basis transactions contained in the 1986 proposed regulations to debt

instruments acquired at an acquisition premium.

Explanation of Provisions

Proposed § 1.1272–2(b)(1) defines the term "purchase" for purposes of determining whether a debt instrument is purchased at a premium under section 1272(c) or at an acquisition premium under section 1272(a)(7). Section 1272(d)(1) provides that for these purposes the term "purchase" means any acquisition of a debt instrument in which the basis of the debt instrument is not determined in whole or in part by reference to the adjusted basis of the debt instrument in the hands of the person from whom acquired. Proposed § 1.1272–2(b)(1) defines the term "purchase" in a manner consistent with section 1272(d)(1). Accordingly, the proposed regulation clarifies that a "purchase" includes the acquisition of a debt instrument in a debt-for-debt exchange in a reorganization (in which the holder's basis in the new debt instrument is determined under section 358(a)).

Proposed § 1.1272–2(b)(2) explains how section 1272(c) exempts certain holders from including OID under section 1272. Section 1272(c) provides that section 1272 does not apply to a holder who purchases a debt instrument at a premium. Proposed § 1.1272–2(b)(2) provides that a debt instrument is purchased at a premium if its purchase price exceeds its SRPM (reduced by the amount of any payment made on the debt instrument prior to the purchase date other than a qualified periodic interest payment (as defined in proposed § 1.1273–1(b)(1)(ii))). Proposed § 1.1272–2(b)(2) further provides that for this purpose, the purchase price of the debt instrument is the holder's adjusted basis in the debt instrument immediately after its acquisition by the holder. Thus, if the holder of a new debt instrument received in a debt-for-debt exchange in a reorganization has an adjusted basis in the new debt instrument that exceeds the debt instrument's SRPM, the holder is not required to include any OID in income. See proposed § 1.1272–2(c), Example 2.

Proposed § 1.1272–2(b)(3) provides rules for determining how OID inclusions are reduced under section 1272(a)(7) for a holder that purchases a debt instrument at an acquisition premium. Under proposed § 1.1272–2(b)(3), a holder's OID accruals are reduced if the holder purchases the debt instrument at a cost that exceeds the debt instrument's issue price, increased by the portion of OID previously includible in the gross income of any holder (without regard to section 1272(a)(7) or the corresponding provisions of prior law) and reduced by the amount of any payment previously made on the debt instrument other than a qualified periodic interest payment (as defined in proposed § 1.1273–1(b)(1)(ii)). In that case, the holder's OID accruals are reduced by a fraction the numerator of which is the amount of this excess and the denominator of which is the total OID remaining to be accrued on the debt instrument. Proposed § 1.1272–2(b)(3)(iv) clarifies that for this purpose, the "cost" of a debt instrument means its adjusted basis in the hands of the holder immediately after its acquisition by the holder. Proposed § 1.1272–2(b)(3) also clarifies that a debt instrument purchased for an amount equal to its SRPM is considered to be purchased at an acquisition premium under section 1272(a)(7). The 1986 proposed regulations do not address this case, but the Service intends to incorporate the rule into the 1986 proposed regulations when they are issued in final form.

In addition, although section 1272(a)(7) refers explicitly only to debt instruments that are purchased after original issue, proposed § 1.1272–2(b)(3) provides that a purchaser at original issue (including, for example, a holder who receives a new debt instrument in a debt-for-debt exchange) may be considered a holder of a debt instrument that was purchased at an acquisition premium for purposes of section 1272(a)(7). See proposed § 1.1272–2(c), *Example 3.* This extension of the principles of section 1272(a)(7), which is made pursuant to the regulatory authority of section 1275(d), is consistent with the rules contained in § 1.1272–1(g) of the 1986 proposed regulations and § 1.1232–3A(a)(4) of the regulations under former section 1232.

Pursuant to the regulatory authority of section 1275(d), proposed § 1.1272–2(b)(4) provides that, for purposes of section 1272, if the basis of a debt instrument is determined, in whole or in part, by reference to the basis of the debt instrument in the hands of another person that purchased the debt instrument at a premium of that purchased the debt instrument at an acquisition premium, then the holder is considered to have purchased the debt instrument. This rule extends the statutory treatment of purchase to certain transferred basis transactions and is consistent with the rules relating to premium contained in § 1.1275–1(f) of the 1986 proposed regulations and § 1.1232–3(d)(2) of the regulations under former section 1232. Because the Service believes that this rule is equally appropriate for transactions involving acquisition premium, the rule has been extended to cover transactions under section 1272(a)(7) as well. Proposed § 1.1272–2(b)(4) also provides that if such a debt instrument is acquired by gift, the adjusted basis of the debt instrument (which is its "purchase price" under proposed § 1.1272–2(b)(2) and its "cost" under proposed § 1.1272–2(b)(3)) is the donee's adjusted basis required to be used under section 1015(a) for the purpose of determining gain (i.e., the donor's basis at the time of the gift).

Effective Dates

Proposed § 1.1272–2 is proposed to be effective for debt instruments issued at a discount after July 1, 1982 and acquired on or after July 11, 1991. Proposed § 1.1272–2 replaces, on a prospective basis, the portions of the 1986 proposed regulations that interpret and apply section 1272(a)(7) and section 1727(c). When the 1986 proposed regulations are finalized, the Service will amend the effective date of proposed §§ 1.1272–1(g)(1), 1.1272–1(m), and 1.1275–1(f) so that they apply to debt instruments issued at a discount after July 1, 1982 and acquired before July 11, 1991. Because the rules of proposed § 1.1272–2 (b)(1), (b)(2) and (b)(3) are consistent with the rules of the 1986 proposed regulations, generally consistent rules will apply to debt instruments issued at a discount after July 1, 1982.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these proposed regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and

copying. A public hearing is scheduled for August 23, 1991. See notice of public hearing published elsewhere in this issue of the Federal Register.

Drafting Information

The principal author of these regulations is Robert N. Deitz, Office of Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, other personnel from the Internal Revenue Service and the Treasury Department participated in their development.

List of Subjects in 26 CFR 1.1231–1 through 1.1297–3

Income taxes.

Proposed Amendments to the Regulations

Accordingly, 26 CFR chapter 1, part 1 is proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * § 1.1272–2 also issued under 26 U.S.C. 1272 and 26 U.S.C. 1275(d).

Par. 2. A new § 1.1272–2 is added to read as follows:

§ 1.1272–2 Treatment of debt instruments purchased at a premium.

(a) *In general.* This section provides definitions and rules for determining the amount of original issue discount (as defined in section 1273(a)) includible in income by a holder who has purchased a debt instrument at a premium within the meaning of section 1272(c) or at an acquisition premium within the meaning of section 1272(a)(7).

(b) *Definitions and rules*—(1) *Definition of purchase*—(i) *Debt instruments issued at a discount after July 18, 1984.* For purposes of section 1272 and this section, the term "purchase" means any acquisition of a debt instrument where the basis of the debt instrument is not determined in whole or in part by reference to the adjusted basis of the debt instrument in the hands of the person from whom acquired. For example, a debt instrument that is received in a debt-for-debt exchange in a reorganization, the basis of which is determined under section 358(a), is considered to be acquired by purchase.

(ii) *Debt instruments issued at a discount after July 1, 1982 and before July 19, 1984.* For purposes of section 1272 and this section, the term "purchase" shall have the same meaning as in paragraph (b)(1)(i) of this section, with the additional requirement that the adjusted basis of the debt instrument also not be determined in whole or in part by reference to the adjusted basis of the debt instrument under section 1014 (relating to property acquired from a decedent).

(2) *Purchase of a debt instrument at a premium.* Section 1272 does not apply to a holder who purchases, within the meaning of paragraph (b)(1) of this section, the debt instrument at a premium. A debt instrument is purchased at a premium if its purchase price exceeds its stated redemption price at maturity (as defined in § 1.1273–1(b), reduced by the amount of any payment made on the debt instrument prior to the purchase date other than a qualified periodic interest payment (as defined in § 1.1273–1(b)(1)(ii))). For purposes of this paragraph (b)(2), the purchase price of the debt instrument is its adjusted basis immediately after its acquisition by the purchaser.

(3) *Reduction in original issue discount where holder pays acquisition premium*—(i) *In general.* If the cost of a debt instrument is equal to or less than the stated redemption price at maturity (as defined in § 1.1273–1(b), reduced by the amount of any payment made on the debt instrument prior to the purchase date other than a qualified periodic interest payment (as defined in § 1.1273–1(b)(1)(ii))), and is greater than the adjusted issue price (as defined in paragraph (b)(3)(iii) of this section), the purchaser has paid an acquisition premium for the debt instrument. For purposes of this section, a holder of a debt instrument that was purchased at an acquisition premium includes a purchaser at original issue.

(ii) *Reduction in daily portion*—(A) *Amount.* If a purchaser pays an acquisition premium for a debt instrument, the daily portion of original issue discount (determined under section 1272(a)(3)) for any day that the purchaser holds the debt instrument shall be reduced by an amount which is equal to the daily portion for that day (determined without regard to this paragraph (b)(3)(ii)(A)) multiplied by the fraction described in paragraph (b)(3)(ii)(B) of this section.

(B) *Determination of fraction.* For purposes of paragraph (b)(3)(ii)(A) of this section—

(*1*) The numerator of the fraction to be determined is the excess of the cost of the debt instrument incurred by the purchaser over the adjusted issue price (as defined in paragraph (b)(3)(iii) of this section) of the debt instrument on the date of purchase; and

(*2*) The denominator of the fraction is the excess of—

(*i*) The stated redemption price at maturity, reduced by the amount of any payment made on the debt instrument prior to the date of purchase other than a qualified periodic interest payment (as defined in § 1.1273–1(b)(1)(ii)), over

(*ii*) The adjusted issue price (as defined in paragraph (b)(3)(iii) of this section) of the debt instrument on the date of purchase.

(iii) *Definition of adjusted issue price.* For purposes of this section, the adjusted issue price is the issue price of the debt instrument, increased by the portion of original issue discount previously includible in the gross income of any holder (without regard to section 1272(a)(7) or the corresponding provisions of prior law) and reduced by the amount of any payment previously made on the debt instrument other than a qualified periodic interest payment (as defined in § 1.1273–1(b)(1)(ii)).

(iv) *Definition of "cost".* For purposes of section 1272(a)(7) and this paragraph (b)(3), the "cost" of the debt instrument incurred by the purchaser means its adjusted basis immediately after its acquisition by the purchaser.

(4) *Treatment of transferred basis transactions*—(i) *In general.* For purposes of section 1272, if, under chapter 1 of the Code, the basis of a debt instrument in the hands of the holder is determined, in whole or in part, by reference to the basis of the debt instrument in the hands of another person that purchased the debt instrument at a premium or that purchased the debt instrument at an acquisition premium, then the holder is considered to have purchased the debt instrument. Thus, for example, the donee of a debt instrument purchased at a premium or at an acquisition premium by the donor is considered to have purchased the debt instrument.

(ii) *Acquisitions by gift.* For purposes of § 1.1272–2, a donee's adjusted basis in a debt instrument is the donee's basis for determining gain under section 1015(a).

(c) *Examples.* The following examples illustrate the application of paragraph (b) of this section.

Example 1. On July 1, 1990, A purchased at original issue for $500 a debt instrument issued by Corporation X. The debt instrument matures on July 1, 1995, and calls for a single payment at maturity of $1,000. Under section 1273(a), the debt instrument was issued with original issue discount of $500. On July 1, 1992, when the debt instrument's adjusted issue price is $659.75, A sells the debt instrument to B for $750 in cash. Because the cost to B of the debt instrument is less than the debt instrument's stated redemption price

at maturity, but greater than the debt instrument's adjusted issue price, B has paid an acquisition premium (as defined in paragraph (b)(3) of this section) for the debt instrument. Accordingly, the daily portion of original issue discount for any day that B holds the debt instrument is reduced by the amount specified in paragraph (b)(3)(ii) of this section, i.e., by a fraction the numerator of which is the excess of the cost of the debt instrument over its adjusted issue price ($90.25), and the denominator of which is the excess of the debt instrument's stated redemption price at maturity over its adjusted issue price ($340.25).

Example 2. On January 1, 1990, Holder purchased at original issue for $1,000 a debt instrument issued by Corporation X. On July 1, 1992, when Holder's adjusted basis in the debt instrument is $1,000, Corporation X issues a new debt instrument with a stated redemption price at maturity of $750 to Holder in exchange for the old debt instrument. Assume that the issue price of the new debt instrument is $600. Thus, under section 1273(a), the debt instrument has original issue discount of $150. The exchange qualifies as a recapitalization under section 368(a)(1)(E), with the consequence that, under sections 354 and 358, Holder recognizes no loss on the exchange and has an adjusted basis in the new debt instrument of $1,000. Under paragraphs (b)(1) and (b)(2) of this section, Holder purchased the new debt instrument at a premium of $250. Accordingly, under section 1272(c) and paragraph (b)(2) of this section, Holder is not required to include original issue discount in income with respect to the new debt instrument.

Example 3. The facts are the same as in *Example 2*, except that Holder purchased the old debt instrument from another holder on July 1, 1990, and on July 1, 1992, Holder's adjusted basis in the old debt instrument is $700. Under section 1273(a), the new debt instrument is issued with original issue discount of $150. Under paragraphs (b)(1) and (b)(3) of this section, Holder purchased the new debt instrument at an acquisition premium of $100. Accordingly, the daily portion of original issue discount that is includible in Holder's income is reduced by the daily portion of acquisition premium determined under section 1272(a)(7) and paragraph (b)(3) of this section.

Example 4. On July 1, 1992, Donee receives as a gift a debt instrument with a stated redemption price at maturity of $1,000 and an adjusted issue price of $800. The donor purchased the debt instrument at an acquisition premium and had an adjusted basis of $950 in the debt instrument on July 1, 1992. The fair market value of the debt instrument on that date is $900. Under paragraphs (b)(3) and (b)(4) of this section, Donee is considered to have purchased the debt instrument at an acquisition premium of $150. Accordingly, the daily portion of original issue discount that is includible in Donee's income is reduced by the daily portion of acquisition premium determined under section 1272(a)(7) and paragraph (b)(3) of this section.

(d) *Effective date.* This section applies to debt instruments issued at a discount after July 1, 1982, and acquired on or after July 11, 1991.

Fred T. Goldberg,

Commissioner of Internal Revenue.

[FR Doc. 91-16556 Filed 7-11-91; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 1

[FI-189-84]

RIN 1545-AH46

Original Issue Discount; Treatment of Debt Instruments Purchased at a Premium; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of public hearing on proposed regulations relating to the accrual of original issue discount by holders of debt instruments that are acquired at a premium or at an acquisition premium.

DATES: The public hearing will be held on Friday, August 23, 1991, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by August 12, 1991.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (FI-189-84), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-377-9236 or (202)-566-3935 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 1272. The proposed regulations appear elsewhere in this issue of the **Federal Register**.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than August 12, 1991 an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-16557 Filed 7-11-91; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 301

[GL-707-88]

RIN 1545-AM75

Civil Cause of Action for Unauthorized Collection Actions; Correction

AGENCY: Internal Revenue Service.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains a correction to the notice of proposed rulemaking (GL-707-88), which was published in the **Federal Register** on June 25, 1991 (56 FR 28842). The proposed rules provide guidance relating to the civil cause of action under section 7433 of the Internal Revenue Code of 1986 for certain unauthorized collection items.

FOR FURTHER INFORMATION CONTACT: Kevin B. Connelly, (202) 535-9682 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of this correction contains proposed regulations amending the Procedure and Administration Regulations (26 CFR part 301) pursuant to section 7433 of the Internal Revenue Code. The proposed regulations reflect the addition of section 7433 by section 6241 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100-647).

Need for Correction

As published, the proposed regulations contain an error which may

prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of proposed regulations (GL–707–88), which was the subject of FR Doc. 91–14912, is corrected as follows:

§ 301.7433–1 [Corrected]

1. On page 28845, column 2, § 301.7433–1, second line from the bottom of paragraph (h), the language "paragraph (f) of this section, are not" is corrected to read "paragraph (e) of this section, are not".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91–16558 Filed 7–11–91; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 218 and 230

RIN 1010–AB58

Offsetting Incorrectly Reported Production Between Different Federal or Indian Leases (Cross-Lease Netting)

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: The Royalty Management Program of the Minerals Management Service (MMS) is proposing to amend its regulations to allow payors to correct reporting errors under certain limited circumstances by offsetting production incorrectly reported and attributed to one lease against underreported production on a different lease to which it should have been attributed (hereafter referred to as "cross-lease netting"). The proposed rulemaking would, under specified conditions, allow crosslease netting for purposes of determining whether an underpayment exists on which interest is owed on any Federal or Indian mineral lease and also for purposes of determining whether an overpayment exists on a Federal offshore mineral lease which is subject to the filing and reporting requirements of section 10 of the Outer Continental Shelf Lands Act of 1953.

DATES: Comments must be received on or before September 10, 1991.

ADDRESSES: Written comments may be mailed to the Minerals Management Service, Royalty Management Program, Rules and Procedures Branch, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 3910, Denver, Colorado 80225, Attention: Dennis C. Whitcomb.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch at (303) 231–3432 or (FTS) 326–3432.

SUPPLEMENTARY INFORMATION: The principal authors of this proposed rule are Mr. Peter Schaumberg and Mr. Geoffrey Heath, Office of the Solicitor, Washington, DC.

1. Background

Under the laws, regulations, and lease terms governing the leasing of Federal and Indian lands and the Outer Continental Shelf (OCS) for mineral production, royalty is due and reported based on the particular lease from which oil, gas, or other minerals are produced. See, e.g., the Mineral Leasing Act of 1920, as amended (MLA), 30 U.S.C. 181, et. seq.; the Outer Continental Shelf Lands Act of 1953, as amended, 43 U.S.C. 1331, et. seq.; the Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351, et. seq.; the Geothermal Steam Act of 1970, 30 U.S.C. 1001, et seq.; the Act of March 3, 1909, 25 U.S.C. 396; the Act of May 11, 1938, 25 U.S.C. 396a, et seq.; and regulations at 30 CFR parts 202, 206, 210 212, and 218, and 25 CFR parts 211 and 212.

Under statutes and regulations, MMS assesses interest on late payments and underpayments of royalties for lease production. See section 111(a) of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1721(a), and regulations at 30 CFR 218.54, 218.102, 218.150(d), 218.202, and 218.302. If a royalty payment is attributed to production from a different lease when payment is initially made, and therefore reported as paid for the incorrect lease, a later correction to reduce the reported royalty for the incorrect lease and increase the royalty paid on the correct lease ordinarily will result in an assessment for late-payment interest due on the originally underpaid lease. The assessments are issued through the MMS's Auditing and Financial System (AFS) exception processing. Similar corrections made as a result of an MMS audit will also result in an assessment for late-payment interest due for the lease for which the royalty should have been reported.

In the case of offshore leases, an additional requirement is involved. Under section 10(a) of the OCSLA, 43 U.S.C. 1339(a), no refund or credit for an overpayment of royalty for an offshore lease may be made unless such refund or credit is requested within 2 years of the date the payment is made and certain procedural requirements are followed. Correction of errors such as those previously described involves such a credit for the lease for which the royalty was initially and incorrectly reported as paid. Therefore, such corrections are subject to section 10's procedural requirements and the allowed 2-year period.

Because royalty obligations are determined on a lease basis, an overpayment under one lease does not negate the existence of an underpayment under another lease for purposes of determining late-payment interest owed for the underpaid lease. Similarly, in the context of OCSLA section 10, an underpayment under one offshore lease does not negate the existence of an overpayment under another lease for purposes of submitting required requests for refund or credit under OCSLA section 10(a).

The Interior Board of Land Appeals (IBLA) has consistently upheld this principle in both contexts. Overpayments and underpayments for different production months within a single lease account will be offset during an audit by MMS or other authorized audit agencies to determine underpaid amounts on which late-payment interest is due or overpaid amounts for which a request for refund or credit must be submitted under OCSLA section 10. See *Shell Oil Co.*, 80 IBLA 634 (1981). However, IBLA has consistently held, in cases involving both late-payment interest calculations and required refund or credit requests under OCSLA section 10, that such offsetting may only occur within a single lease account during an audit period, and not between leases. Under existing MMS procedures, offsetting of overpayments and underpayments between leases is not permitted (except where both leases are included in the same unitization or communitization agreement). In the late-payment interest context, see *Mesa Petroleum Co.*, 108 IBLA 149 (1989); *Mesa Petroleum Co.*, 111 IBLA 201 (1989); *FMP Operating Co.*, 111 IBLA 377 (1989); and *Mesa Operating Limited Partnership*, No. IBLA 87–753 (Order issued June 13, 1990). In the OCSLA section 10 context, see *Sun Exploration and Production Co.*, 106 IBLA 300 (1989); *Union Oil Co. of California*, 110 IBLA 62 (1989); *Chevron USA, Inc.*, 111 IBLA 92 (1989); and *Union Exploration Partners, Ltd.*, 113 IBLA 186 (1990).

Allowing offsetting of overpayments and underpayments between leases as a matter of course and on the initiative of the lessee or royalty payor is not feasible given the more than 20,000 leases, many of which have multiple payors, which MMS administers.

Permitting offsetting on that basis effectively would require a review of all of that payor's leases (in the case of requests for refund or credit under OCSLA section 10, all of the payor's OCS leases), at least for the production month for which the offset is claimed, before an offset could be allowed. Otherwise, there would be no way of ascertaining whether the payor in fact was overpaid or underpaid, and the system would be subject to the payor's arbitrary selectivity. Such a reconciliation capability is not possible.

Moreover, allowing offsetting between leases as a matter of course could have substantial effects on ultimate recipients of royalty revenue from different categories of leases under established permanent indefinite appropriations. For example, under the MLA, each State receives 50 percent of royalties and other lease revenues (90 percent for Alaska) from leases on the Federal public domain within its boundaries. See 30 U.S.C. 191. Coastal States receive 27 percent of revenues from certain offshore leases located within the zone defined and governed by section 8(g) of OCSLA, 43 U.S.C. 1337(g) (the "8(9) zone"). Other recipients receive various portions of revenues from leases issued under other laws; e.g., the Mineral Leasing Act for Acquired Lands, See 30 U.S.C. 355. Allowing offsetting between leases without restriction as a matter of course may affect the distribution of royalty revenues to the proper recipients.

The MMS recognizes, however, that because many royalty payors report and pay for hundreds and sometimes thousands of leases, some situations arise in which a royalty payment which is otherwise correct and timely is incorrectly reported as attributed to production from one lease, when it should have been reported as attributed to production from a different lease. For example, a lessee may receive from an operator incorrect allocation figures for production from two adjacent OCS leases which is commingled into a common pipeline, where the total volume of production is correct and royalty is timely paid thereon, which are then corrected to revise the allocation of that total between the individual leases.

As another example, a royalty payor may inadvertently invert digits in the lease number for which royalty is being reported, but otherwise pay the royalty correctly and timely. If the incorrect lease number is in fact the number of another valid lease, the royalty report may clear the AFS system edits and the error be discovered only upon later checks or review.

These examples may occur under circumstances where the lessor/royalty owner is the same for both leases and the total royalty distribution to recipients of permanent indefinite appropriations is the same regardless of which lease the royalty payment is attributed to. In other words, both leases are within the same State in the case of onshore MLA leases (or are in the same county in the case of some leases on acquired lands), or are both on the OCS (and, if within the 8(g) zone, are both within the 8(g) zone and are offshore of the same coastal state), or are owned by the same Indian lessor. They also occur in the context of both determining underpayments on which late-payment interest is due and determining overpayments for which a request for refund or credit must be submitted under OCSLA section 10.

These and other examples which could be cited have certain common characteristics which distinguish them from most royalty payment deficiencies. First, the mistake is in the nature of a reporting error rather than a substantively incorrect royalty payment or an untimely royalty payment in the first instance. Second, there is no ultimate loss of time value of money to the lessor when the reporting error is corrected. In addition, one error is the common source of both the overpayment and the underpayment for the respective leases. Moreover, there is no ultimate effect on the distribution of royalty revenues under permanent indefinite appropriations established by law; thus, there is no time value of money loss to these recipients either. Finally, the circumstances are such that the nature of the error can be proven by reliable documentary evidence. Thus, after correcting the reporting error, affected parties would be in the same financial position as if the error had not been committed. Under these circumstances, MMS does not believe that assessing late-payment charges for the underpaid lease, or disallowing a refund or credit, is justified.

The MMS therefore is proposing to allow royalty payors to offset royalty overpayments for one lease against underpayments for a different lease, for purposes of determining the size of an underpayment on which late-payment interest is due, under limited conditions described in the next section of this preamble. Similarly, MMS is proposing to allow payors to offset royalty underpayments for one offshore lease against overpayments for a different offshore lease, for purposes of determining whether and to what extent an overpayment exists for which a refund or credit must be requested, under similar, limited conditions described below. (Allowed offsetting is referred to as "cross-lease netting" in both contexts.) Cross-lease netting would be allowed only under the specified conditions. In all other situations, the law as established by the previously cited IBLA decisions would remain unchanged.

II. Proposed Allowable Cross-Lease Netting

(a) For Calculation of Late-Payment Interest

The MMS proposes to add a new provision to the regulations at 30 CFR part 218, to be designated 30 CFR 218.42, which would allow crosslease netting for purposes of determining an underpayment upon which late-payment interest is due, under certain conditions where the payor can demonstrate a plain reporting error which does not result in any ultimate loss of time value of money to a Federal or Indian lessor and which has no consequence for the ultimate recipients of royalty revenues. Therefore, cross-lease netting would be allowed only under all the following conditions:

(1) The error results from attributing and reporting an equal volume of production produced from one lease during a particular production month to a different lease from which it was not produced for that same production month. This condition is necessary to ensure that offsetting will be allowed only when a genuine reporting error has occurred, as opposed to an ordinary royalty underpayment. If different volumes of production from different leases could be offset, particularly if different production months were involved, there would be no practical way to verify that only a reporting error of the type described is involved or to limit allowed offsets to situations involving such reporting errors. There would be nothing to prevent a lessee or payor from using many royalty overpayments as offsets against other unrelated royalty underpayments on other leases and manipulating corrections to its reports to avoid interest liability.

This condition would not require that the same value of production be involved when the production is reattributed to the correct lease. Ascribing a particular volume of production to the wrong lease may result in a royalty value under that lease which is different from the correct royalty value when the production is reported under the correct lease. If the

royalty attributable to the value of production as reported under the wrong lease is greater than the royalty attributable to the value of production under the correct lease, the lessor has not suffered any loss of time value. (The difference is an overpayment which may be credited or refunded, but subject to OCSLA section 10 limitations for offshore leases.) If the royalty attributable to the value of production under the wrong lease is less than the royalty attributable to the value of production under the correct lease, the lessee or payor would owe the difference as additional royalty, plus appropriate late-payment interest on that royalty difference.

(2) The payor is the same for the production attributable to both leases. This condition is necessary for practical administration. While an allocation error by a pipeline operator, for example, could result in overreporting production on one lease and underreporting an equal volume of production on another lease which has a different payor and where all other necessary conditions are met, MMS believes it is impractical at this time to try to correlate data from more than one payor to resolve reporting errors.

(3) The payor submits production reports, pipeline allocation reports, or other similar documentary evidence pertaining to the specific production involved which verifies the correct production information. This condition is necessary to limit allowed offsets to the type of reporting error situations previously described by requiring reliable documentary evidence which demonstrates the reporting error. In the absence of this requirement, a payor easily could manipulate corrections to royalty reports and claim that some portion of an overpayment on a particular lease was due to misreporting production which should have been reported on an underpaid lease.

(4) The lessor is the same for both leases (or, in the case of Indian allotted leases with more than one allottee-lessor, the same allottees are the lessors of both leases and hold the same percentage interests in both leases). This requirement is necessary to ensure that offsetting is not permitted where one lessor; e.g., a state, a private party, a particular Indian tribe or allottee or group of allottees, has had the advantage of the time value of the overpayment on the wrong lease while a different lessor; i.e., the United States, a different Indian tribe, or a different allottee or group of allottees, has lost the time value of the underpayment on the correct lease. In such situations, the payor should be required to pay appropriate late-payment interest to the lessor who should have had the benefit of the funds had the error not occurred and the royalty payment been made correctly.

(5) The ultimate recipients of royalty revenues under permanent indefinite appropriations are the same for, and receive the same percentage of revenue from, both leases. The permanent indefinite appropriations referred to include the States' 50 percent share (90 percent for Alaska) of royalties from onshore MLA leases under 30 U.S.C. 191; coastal States' 27 percent share of royalties from offshore leases within the 8(g) zone under 43 U.S.C. 1337(g); counties' 25 percent share of royalties from leases on acquired national grasslands under 30 U.S.C. 355 (incorporating the formula of 7 U.S.C. 1012) (as one example of payments made to States or counties from royalties from leases of acquired land under 30 U.S.C. 355, incorporating the formula applicable to the particular category of acquired land); and the States' 90 percent share of royalties from leases on State selected lands under 43 U.S.C. 852(a)(4) (as one example of payments made under certain specialized statutes providing for mineral leasing of a particular category of lands). While interest on late payments or underpayments of royalty is owed to the lessor (the United States or an Indian tribe or allottee, as addressed in the previous paragraph), not to a derivative recipient of royalty revenues under a permanent indefinite appropriation who does not own a property interest in the lease, this condition is appropriate to avoid an analogous inequity to the ultimate recipients of royalty revenues. Particularly since late-payment interest is shared with the ultimate recipient of royalty revenue in the same proportion as the principal royalties (see 30 U.S.C. 191 and Pub. L. No. 100–524, section 7, 102 Stat. 2607, 30 U.S.C. 191a), if the misreporting of production between different leases resulted in a delay in receipt of revenues by the correct recipient, it is appropriate to prohibit crosslease netting in that circumstance.

It would be the payor's burden to show by satisfactory documentation that each of these conditions had been met. A payor could make that showing either through the administrative appeals procedure of 30 CFR part 290 after receiving an invoice for late-payment interest due, or could submit such documentation to MMS informally to avoid unnecessary clogging of the appeals process where there is no real necessity for a written decision by the MMS Director. In either case, if the documentation submitted is sufficient, the late-payment interest assessment would be cancelled.

The proposed regulation would apply to all Federal leases, onshore and offshore, and to all Indian leases, for all minerals (oil, gas, coal, other solid minerals, and geothermal steam). However, MMS would like comment on whether Indian tribal and/or allotted leases should be excluded from this rulemaking. Particularly for Indian allotted leases, MMS does not expect that there would be many situations which would meet all the requirements of the proposed rule.

As a matter of conforming amendments, MMS proposes to amend the existing provisions at 30 CFR 218.54, 218.102, 218.150, 218.202, and 218.302 to reference the new regulation.

(b) Calculation of Overpayments Under Offshore Leases Subject to OCSLA Section 10 Credit or Refund Requests and 2-Year Allowed Period.

In accordance with the current practice of limiting offsetting of overpayments and underpayments to a single lease, if a payor incorrectly reports royalty payments for a wrong offshore lease, the payor is required to file a request for refund of the overpayment in accordance with OCSLA section 10. If the request for repayment is not filed within the allowed 2-year period, MMS cannot authorize a refund or recoupment of the overpayment. Consistent with proposed cross lease netting for late-payment interest purposes (see section II(a) above of this preamble), MMS is also proposing to allow cross-lease netting in limited circumstances for purposes of determining whether overpayments exist on offshore leases that are subject to the filing and reporting requirements of section 10.

The MMS is proposing that the same general requirements for crosslease netting apply for section 10 purposes as are proposed for late-payment interest purposes. Similar to the conditions proposed for late-payment interest purposes, conditions proposed for section 10 purposes are intended to restrict allowable cross-lease netting to situations where the payor can demonstrate a plain reporting error, rather than an overpayment which must be balanced by granting a refund or credit, and where the correction does not result in any ultimate loss of the time value of money to the Federal lessor and which has no consequence for any ultimate recipient of royalty

revenues. Thus, both of the mineral leases must be outside the 8(g) zone, or if they are in the 8(g) zone, they must be offshore of the same coastal State.

Under the proposed new rule at 30 CFR 230.51, cross-lease netting for section 10 purposes would be allowed only upon the payor's submission of a written request to MMS for its approval for the payment offset. The payor would be required to provide adequate documentation with its request to show that all the following conditions had been met before MMS would allow cross-lease netting:

(1) The error results from attributing and reporting an equal volume of production produced from one lease during a particular production month to a different lease from which it was not produced for that same production month. This condition is necessary for reasons similar to those for the identical condition for offsetting in the late-payment interest context explained above; i.e., to ensure that offsetting will be allowed only when a genuine reporting error has occurred, as opposed to an ordinary royalty overpayment for which a request for refund and the prescribed procedures are required under OCSLA section 10. If different volumes of production from different leases could be offset, particularly if different production months were involved, there would be no practical way to verify that only a reporting error of the type described is involved or to limit allowed offsets to situations involving such reporting errors. There would be nothing to prevent a lessee or payor from using many royalty underpayments as offsets against other unrelated royalty overpayments on other leases and manipulating corrections to its reports to avoid having to submit requests for refund or credit.

This condition again would not require that the same value of production be involved when the production is reattributed to the correct lease. If the royalty attributable to the production as reported under the wrong lease is greater than the royalty attributable to the production under the correct lease, the payor has not made an excess payment for which a refund or credit would be appropriate to the extent of the royalty owed under the correct lease. The difference is an overpayment which may be credited or refunded; however, the section 10 requirements would apply to that increment. If the royalty as reported under the wrong lease is less than the royalty reported under the correct lease, the lessee or payor would owe the difference as additional royalty, plus appropriate late-payment interest on that royalty difference. The entire royalty attributed to the wrong lease would be offset and no section 10 requirements would apply.

(2) The payor is the same for the production attributable to both leases. This condition is necessary for practical administration for reasons similar to those for the identical condition explained above in the late-payment interest context.

(3) The payor submits production reports, pipeline allocation reports, or other similar documentary evidence pertaining to the specific production involved which verifies the correct production information. This condition is necessary to limit allowed offsets to the type of reporting error situations previously described by requiring reliable documentary evidence which demonstrates the reporting error. In the absence of this requirement, a payor easily could manipulate corrections to royalty reports and claim that some portion of an overpayment on a particular lease was due to misreporting production which should have been reported on an underpaid lease, and thereby effectively nullify the section 10 requirements.

(4) In the case of leases which are within the zone defined and governed by section 8(g) of the OCSLA, as amended, 43 U.S.C. 1337(g), the leases are located off the coast of the same State. (There is no necessity for an express condition that the lessor is the same for both leases in this context; the United States is the lessor for all leases on the OCS.) This condition is necessary for reasons similar to those in the late-payment interest context. See paragraph II(a)(5) above of this preamble. It ensures that the ultimate recipients of royalty revenues under OCSLA section 8(g)'s permanent indefinite appropriation are the same for both leases. All coastal States receive the same share, 27 percent, under section 8(g) uniformly. It is appropriate to prohibit cross-lease netting where different coastal States are involved to avoid inequity to the ultimate recipient of a portion of the royalty revenues.

If MMS approves a payor's request for a payment offset, the payor would be required to submit an adjusting royalty report (Form MMS–2014) and an adjusting production report (Form MMS–4054) to correct its reporting to MMS's AFS and the Production Accounting and Auditing System. Royalties attributed to an incorrect lease under the conditions specified above and for which offset is approved by MMS would not, under the proposed rule, be subject to the filing and reporting requirements of section 10.

(c) Other Matters.

The submission of false production data or other evidence in an attempt to improperly invoke the exception set forth in the proposed regulations at 30 CFR 218.42 and 230.51, to avoid requesting a refund or credit as required by section 10 of OCSLA, or to avoid payment of late payment interest due, potentially could result in the assessment of a civil or criminal penalty for intentional violation under section 109(d) of FOGRMA, 30 U.S.C. 1719(d), and 30 CFR 241.51(b)(1) (ii) or (iii).

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed rule to the location identified in the **ADDRESSES** section of this preamble. Comments must be received on or before the date identified in the **DATES** section of this preamble.

III. Procedural Matters

Executive Order 12291 and the Regulatory Flexibility Act

This rulemaking may result in a loss of some revenue to royalty recipients from interest charges currently billed and collected from payors on underpayments on a lease that could be offset against overpayments on a different lease under the proposed rule. However, this rulemaking does not result in a major increase in costs for any Federal, State, or local government agency or any individual industry or have any adverse effects on competition, employment, or productivity. Accordingly, the Department has determined that this rule is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq).

Executive Order 12630

The Department certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared pursuant to Executive Order 12630, "Government Action and Interference with Constitutionally Protected Property Rights."

Paperwork Reduction Act of 1980

The collection of information contained in this rule on Forms MMS–2014 and MMS–4054 has been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance numbers 1010–0022 and 1010–0040.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment; therefore, a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects

30 CFR Part 218

Coal, Continental shelf, Electronic funds transfers, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Penalties, Petroleum, Public lands-mineral resources, Reporting and recording requirements.

30 CFR Part 230

Coal, Continental shelf, Electronic funds transfers, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Penalties, Petroleum, Public lands-mineral resources, Reporting and recordkeepinging requirements.

Dated: May 3, 1991.

Jennifer A. Salisbury,

Acting Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR Parts 218 and 230 are proposed to be amended as set forth below:

PART 218—COLLECTION OF ROYALTIES, RENTALS, BONUSES AND OTHER MONIES DUE THE FEDERAL GOVERNMENT

1. The authority citation for part 218 continues to read as follows:

Authority: 5 U.S.C. 301 et seq.; 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1301 et seq.; and 43 U.S.C. 1801 et seq.

2. A new § 218.42 is added under Subpart A—General Provisions, to read as follows:

§ 218.42 Cross-lease netting in calculation of late payment interest.

(a) Interest due from a payor on any underpayment for any Federal mineral lease (onshore or offshore) and on any Indian mineral lease for any production month shall not be reduced by offsetting against that underpayment any overpayment made by the payor on any other lease, except as provided in paragraph (b) of this section.

(b) Royalties attributed to production from one lease which should have been attributed to production from another lease may be offset to determine whether and to what extent an underpayment exists on which interest is due only if:

(1) The error results from attributing and reporting an equal volume of production, produced from one lease during a particular production month, to a different lease from which it was not produced for that same production month;

(2) The payor is the same for both the lease to which production was attributed and the lease to which it should have been attributed;

(3) The payor submits production reports, pipeline allocation reports, or other similar documentary evidence pertaining to the specific production involved which verifies the correct production information;

(4) The lessor is the same for both leases (or in the case of Indian allotted leases with more than one allottee lessor, the same allottees are the lessors of both leases and hold the same percentage interests in both leases); and

(5) The ultimate recipients of any royalty or other lease revenues under any applicable permanent indefinite appropriations are the same for, and receive the same percentage of revenue from, both leases.

(c) If MMS assesses late-payment interest and the payor asserts that some or all of the interest assessed is not owed pursuant to the exception set forth in paragraph (b) of this section, the burden is on the payor to demonstrate that the exception applies in the specific circumstances of the case.

(d) The exception set forth in paragraph (b) of this section shall not operate to relieve any payor of liability imposed by statute or regulation for late or erroneous reporting.

3. A new paragraph (e) is added to § 218.54 under Subpart B—Oil and Gas, General, to read as follows:

§ 218.54 Late payments.

* * * * *

(e) An overpayment on one lease may be offset against an underpayment on another lease to determine a net underpayment on which interest is due pursuant to conditions specified in § 218.42 of this part.

4. A new paragraph (d) is added to § 218.102 under Subpart C—Oil and Gas, Onshore, to read as follows:

§ 218.102 Late payment or underpayment charges.

* * * * *

(d) An overpayment on one lease may be offset against an underpayment on another lease to determine a net underpayment on which interest is due pursuant to conditions specified in § 218.42 of this part.

5. A new paragraph (e) is added to § 218.150 under Subpart D—Oil, Gas and Sulfur, Offshore, to read as follows:

§ 218.150 Royalties, net profit shares, and rental payments.

* * * * *

(e) An overpayment on one lease may be offset against an underpayment on another lease to determine a net underpayment on which interest is due pursuant to conditions specified in § 218.42 of this part.

6. A new paragraph (f) is added to § 218.202 under Subpart E—Solid Minerals—General, to read as follows:

§ 218.202 Late payment or underpayment charges.

* * * * *

(f) An overpayment on one lease may be offset against an underpayment on another lease to determine a net underpayment on which interest is due pursuant to conditions specified in § 218.42 of this part.

7. A new paragraph (f) is added to § 218.302 under Subpart F—Geothermal Resources, to read as follows:

§ 218.302 Late Payment and underpayment charges.

* * * * *

(f) An overpayment on one lease may be offset against an underpayment on another lease to determine a net underpayment on which interest is due pursuant to conditions specified in § 218.42 of this part.

PART 230—ROYALTY REFUNDS

1. Part 230, previously reserved, is amended by revising the part heading and by adding text to read as follows:

PART 230—RECOUPMENTS AND REFUNDS

Subpart A—General Provisions

Sec.

230.51 Cross-lease netting in calculation of overpayments under section 10 of the OCSLA.

Subpart B—Oil, Gas, and OCS Sulfur, General—[Reserved]

Subpart C—Federal and Indian Oil—[Reserved]

Subpart D—Federal and Indian Gas—[Reserved]

Subpart E—Solid Minerals, General—[Reserved]

Subpart F—Coal—[Reserved]

Subpart G—Other Solid Minerals—[Reserved]

Subpart H—Geothermal Resources—[Reserved]

Subpart I—OCS Sulfur—[Reserved]

Authority: 5 U.S.C. 301 et seq.; 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq. :

Subpart A—General Provisions

§ 230.51 Cross-lease netting in calculation of overpayments under section 10 of the OCSLA.

(a) The amount of any refund or credit for any overpayment for any lease governed by the Outer Continental Shelf Lands Act (OCSLA) for any production month shall not be reduced by offsetting against that overpayment any reported underpayment by the payor on any other lease, except as provided in paragraph (b) of this section.

(b) Royalties attributed to production from one lease governed by the OCSLA which should have been attributed to production from another lease governed by the OCSLA may be offset without regard to the provisions of OCSLA section 10, 43 U.S.C. 1339, only if the payor submits a written request to MMS for its approval of the correction and provides adequate documentation to show that the following conditions exist:

(1) The error results from attributing and reporting an equal volume of production, produced from one lease during a particular production month, to a different lease from which it was not produced for that same production month;

(2) The payor is the same for both the lease to which the production was attributed and the lease to which it should have been attributed;

(3) The payor submits production reports, pipeline allocation reports, or other similar documentary evidence pertaining to the specific production involved which verifies the correct production information; and

(4) In the case of leases which are within the zone defined and governed by section 8(g) of the OCSLA, as amended, 43 U.S.C. 1337(g), the leases are located off the coast of the same State.

(c) If MMS approves a correction pursuant to paragraph (b) of this section, the payor is required to submit an adjusting royalty report (Form MMS–2014) pursuant to 30 CFR part 210 and an adjusting production report (Form MMS–4054) pursuant to 30 CFR part 216 to correct its reporting to the Auditing and Financial System and the Production Accounting Auditing System.

(d) If MMS requires a repayment of principal royalties or assesses late-payment interest as a result of the payor having improperly offset any underpayment against an overpayment and, therefore, having failed to request a refund or credit as required by section 10 of the OCSLA, 43 U.S.C. 1339, and the payor asserts pursuant to 30 CFR part 290 that some or all of the royalties or interest assessed is not owed pursuant to the exception set forth in paragraph (b) of this section, the burden is on the payor to demonstrate that the exception applies in the specific circumstances of the case.

(e) The exception set forth in paragraph (b) of this section shall not operate to relieve any payor of any liability imposed by statute or regulation for late or erroneous reporting.

Subpart B—Oil, Gas, and OCS Sulfur, General—[Reserved]

Subpart C—Federal and Indian Oil—[Reserved]

Subpart D—Federal and Indian Gas—[Reserved]

Subpart E—Solid Minerals, General—[Reserved]

Subpart F—Coal—[Reserved]

Subpart G—Other Solid Minerals—[Reserved]

Subpart H—Geothermal Resources—[Reserved]

Subpart I—OCS Sulfur—[Reserved]

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BILLING CODE 4310–MR–M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Regulatory Program; Revision of Administrative Rule and the Ohio Revised Code

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is reopening the public comment period for Revised Program Amendment Number 43 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Ohio has proposed further revisions to one rule in the Ohio Administrative Code and one section of the Ohio Revised Code which are intended to make the rule and law as effective as the corresponding Federal regulations concerning the definition of "road." Ohio has also submitted administrative record documents that identify and provide justification for design criteria which are proposed for use in lieu of compaction testing to ensure compliance with the 1.3 minimum safety factor for certain impoundments and primary road embankments.

This notice sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on August 12, 1991. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on August 6, 1991. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. July 29, 1991.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Richard J. Seibel, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge,

one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232, Telephone: (614) 866–0578.

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H–3, Columbus, Ohio 43224, Telephone: (614) 265–6675.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

By letter dated November 17, 1989 (Administrative Record No. OH–1240), the Director of OSM notified the Ohio Department of Natural Resources, Division of Reclamation (Ohio) of a number of Federal regulations promulgated between June 9, 1988, and July 30, 1989, for which OSM had determined that the corresponding Ohio rules were now less effective than the new Federal counterparts. In response to the OSM notification, Ohio submitted proposed Program Amendment Number 43 by letter dated January 16, 1990 (Administrative Record No. OH–1265). This amendment proposed revisions to seven sections of the Ohio Administrative Code (OAC).

OSM announced receipt of proposed Program Amendment Number 43 in the February 2, 1990 **Federal Register** (55 FR 3604), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on March 5, 1990. The public hearing scheduled for February 27, 1990, was not held because no one requested an opportunity to testify.

By letter dated August 17, 1990 (Ohio Administrative Record No. OH–1354), Ohio submitted Revised Program Amendment Number 43 containing two further proposed revisions to OAC Section 1501:13-9-04. These two revisions were intended to make the proposed rule as effective as the corresponding Federal regulations concerning sediment pond and impoundment spillways.

OSM announced receipt of Revised Program Amendment Number 43 in the September 6, 1990 **Federal Register** (55 FR 36661), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on October 9, 1990. The public hearing scheduled for October 1, 1990 was not held because no one requested an opportunity to testify.

On January 7, 1991, OSM sent its comments to Ohio on both Program Amendment Number 42 and Revised Program Amendment Number 43 (Ohio Administrative Record No. OH–1430). In response to OSM's letter, Ohio submitted additional proposed changes to Revised Program Amendment Number 43 on February 12, 1991 (Ohio Administrative Record No. OH–1454). In that submission, Ohio proposed further revisions to three rules and deleted previously proposed changes to one other rule. These revisions concerned termination of jurisdiction, public roadways, sedimentation pond and impoundment spillways, and certification of primary roads. Also in that submission, Ohio requested a 30-day extension of time to submit design standards which will be proposed for use in lieu of engineering tests to ensure compliance with the minimum static safety factor for certain impoundments and primary road embankments.

OSM announced receipt of Ohio's additional proposed changes to Revised Program Amendment Number 43 in the March 6, 1991 **Federal Register** (56 FR 9312), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on April 5, 1991. The public hearing scheduled for April 1, 1991 was not held because no one requested an opportunity to testify.

By letter dated March 14, 1991 (Ohio Administrative Record No. OH–1481), Ohio requested a 30-day extension for submittal of the design standards described above. OSM approved this extension on March 18, 1991 (Ohio Administrative Record No. OH–1483). By letter dated April 22, 1991 (Ohio Administrative Record No. OH–1511), Ohio requested a 60-day extension for submittal of the design standards. OSM approved this extension on May 1, 1991 (Ohio Administrative Record No. OH–1514).

By letter dated June 24, 1991 (Ohio Administrative Record No. OH–1538), Ohio submitted further revisions to and administrative record documents in support of Revised Program Amendment Number 43. The new revisions proposed in the June 24, 1991, submission are discussed briefly below:

I. Definition of "Road"

OAC 1501:13–1–02 paragraph (YYYY): Ohio is proposing to further revise this paragraph to adopt terminology from the Federal definition of "road" to 30 CFR 701.5. Ohio is revising a portion of the State definition of "road" to read "The term [road] does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas."

Ohio Revised Code 1513.01 paragraph (G)(2): Ohio is proposing to revise this paragraph to delete the existing exclusion of public roadways from areas which are included under the definition of "operation" or "coal mining operation."

II. Proposed Safety Factors for Certain Impoundments

In its initial submission of Program Amendment Number 43 on January 16, 1990, Ohio proposed to add OAC 1501:13–9–04 paragraph (H)(1)(c)(ii) to impose a minimum static safety factor of 1.3 on non-MSHA-sized impoundments located where failure would not be expected to cause loss of life or serious property damage. Ohio also proposed to add OAC 1501:13–4–05 paragraph (H)(2)(c) and OAC 1501:13–4–14 paragraph (H)(2)(c) to allow the use of design standards established by the Chief of the Ohio Department of Natural Resources, Division of Reclamation (the Chief) in lieu of compaction testing to ensure compliance with the minimum static safety factor.

In the administrative record information in its June 24, 1991, submission, Ohio provided information on the design standards which the Chief will apply to non-MSHA impoundments in lieu of stability analysis to ensure compliance with the minimum static safety factor.

(1) The impoundments will employ current, prudent engineering practices;

(2) The embankment's combined upstream and downstream side slopes shall be no steeper than the sum of 5H:1V, with neither slope steeper than 2H:1V (example: if downstream slope is 3H:1V then upstream slope can be no

steeper than 2H:1V. The minimum combined slope requirement of 5H:1V refers to the 3H and 2H added together);

(3) The minimum top width shall be (H+35)/5, where H is the embankment height as measured from natural ground at the upstream toe to the top of the embankment.

Ohio also provided stability analysis calculations to justify these minimum design standards.

III. Proposed Safety Factors for Primary Road Embankments

In its initial submission of Program Amendment Number 43 on January 16, 1990, Ohio proposed to add OAC 1501:13–10–01 paragraph (G)(3) to impose a minimum static safety factor of 1.3 on each primary road embankment. Ohio also proposed to add OAC 1501:13–4–05 paragraph (M)(2) and OAC 1501:13–4–14 paragraph (L)(2) to allow the use of design standards established by the Chief in lieu of compaction testing to ensure compliance with the minimum static safety factor.

In the administrative record information in its June 24, 1991, submission, Ohio provided information on the design standards which the Chief will apply to primarily road embankments in lieu of stability analysis to ensure compliance with the minimum static safety factor:

(1) The embankments will employ current, prudent engineering practices;

(2) The side slopes shall not exceed 2H:1V;

(3) The embankment foundation area must be cleared of all organic matter and the entire foundation surface must be scarified;

(4) The fill material must be free of sod, large roots, other large vegetative matter, and coal processing waste; and

(5) The fill was brought up in horizontal layers of such thickness as required to facilitate compaction in accordance with prudent construction standards.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is not seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4:00 p.m. on July 29, 1991. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Hearing

If only one person requests an opportunity to comment at a meeting, a public hearing, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings shall be opened to the public and, if possible, notices of the meeting will be posted at the locations listed under "**ADDRESSES.**" A written summary of each public meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 8, 1991.

Carl C. Close,

Assistant Director Eastern Support Center.

[FR Doc. 91–16691 Filed 7–11–91; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 950

Wyoming Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed Rule; Public Comment Period and Opportunity for Public Hearing on Proposed Amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Wyoming permanent regulatory program (hereinafter, the "Wyoming program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment is intended to revise the State program to be consistent with the corresponding Federal standards, incorporate the additional flexibility afforded by the revised Federal regulations, and to improve operational efficiency.

This notice sets forth the times and locations that the Wyoming program and proposed amendment to that program are available for public inspection and the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., m.d.t., August 12, 1991. If requested, a public hearing on the proposed amendment will be held on August 6, 1991. Requests to present oral testimony at the hearing must be received by 4 p.m., m.d.t., on July 29, 1991.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below. Copies of the Wyoming program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, room 2128, Casper, WY 82601–1918, Telephone (307) 261–5776.

Department of Environmental Quality, Land Quality Division, Herschler Building—Third Floor West, 122 West 25th Street, Cheyenne, WY 82002, Telephone: (307) 777–7756.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Director, Casper Field Office, on telephone number (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. General background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Wyoming program can be found in the November 26, 1980 **Federal Register** (45 FR 78637). Subsequent actions concerning Wyoming's program and program amendments can be found at 30 CFR 950.12, 950.15, and 950.16.

II. Proposed Amendment

By letter dated June 24, 1991, (Administrative Record No. WY–15–1) Wyoming submitted a proposed amendment to its program pursuant to SMCRA. A portion of the Wyoming proposed amendment is at its own initiative and the remainder is in response to 30 CFR part 732 notifications dated December 23, 1985, June 9, 1987, and November 7, 1987. The Department of Environmental Quality, Land Quality Division Rules and Regulations that Wyoming proposes to amend are: chapter I—Definition of public building, elimination of the two acre exemption, definition of joint agency approval; chapter II—Fish and wildlife information outside the permit area, solid waste permitting for mines, information requirements and confidentiality, historic and archaeological resources, stability analysis waiver, cultural resources management plan, revegetation monitoring, livestock grazing; chapter IV—Topsoil substitutes, conditions for removal of diversions; chapter XI—Information on historic/archaeological resources for coal exploration permits; chapter XII—Definition of self-bond; chapter XIII—Required finding on historic resources for permit approval, wild and scenic river study corridors, coal mine permit renewal processing; chapter XIV—Time frame for permit revisions; chapter XXI—Area of water rights reporting for in situ mines.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Wyoming program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m., m.d.t. on July 29, 1991. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held. Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statement in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet the OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT**". All such meetings will be open to the public and, if possible, notices of meetings will be posed at the locations listed under "**ADDRESSES**". A written summary of each meeting will be made a party of the administrative record.

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 5, 1991.

Raymond L. Lowrie,

Assistant Director Western Support Center.

[FR Doc. 91–16589 Filed 7–11–91; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD1 91–045]

Special Local Regulation: Miss Liberty Challenge Cup, New York, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes to establish a special local regulation for the Miss Liberty Challenge Cup. The event, sponsored by the New Jersey Offshore Powerboard Racing Association, is a Powerboard race (with vessels ranging from 25' to 50'), that takes place August 9th, 1991. During the one day event, the regulations would place operating restrictions on watercraft operating in that portion of water within 300 yards of the race committee boat located in Federal Anchorage #20C, north of Liberty Island Lighted Gong Buoy #29 (LLNR 32305). The potential hazards to participants, spectators and transiting vessels are such that in the interest of safety of life on the navigable waters of the United States, the Coast Guard District Commander will issue special local regulations governing the conduct of the regatta. By adopting permanent regulations, the Coast Guard will continue to provide the same level of public safety at reduced administrative cost. Public notice of the exact dates will be published each year in a Federal Register Notice and in the Coast Guard Local Notice to Mariners.

DATES: Comments must be received on or before August 8, 1991.

ADDRESSES: Comments should be mailed to Commander (bb), First Coast Guard District, 408 Atlantic Ave, Boston, MA 02110. The comments and other materials referenced in this notice will be available for inspection and copying at 408 Atlantic Avenue, Room 428, Boston, Massachusetts. Normal Office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) E.G. Westerberg, Chief, Boating Safety Affairs Branch, (617) 223–8310.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names

and addresses, identify this notice (CGD1 91–045) and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are LT(jg) E. G. Westerberg, project officer, First Coast Guard District Boating Safety Affairs Branch, and LT J.B. Gately, project attorney, First Coast Guard District Legal Division.

Discussion of Proposed Regulations

The Miss Liberty Challenge Cup is a 25′ to 50′ Powerboat race, sponsored by the new Jersey Offshore Powerboat Association, of Westfield, NJ, that will involve up to 35 powerboats. The race begins in New York City (Statue of Liberty), goes to Atlantic City, and returns to New York City. The start/finish line will be located in Federal Anchorage #20C, north of Liberty island Lighted Gong Buoy #29 (LLNR 32305). No spectator craft shall be permitted within 300 yards of the aforementioned start/finish line. Commander, Coast Guard Group New York reserves the right to delay, modify or cancel the race as conditions or circumstances require. This regulation also prohibits the sponsor from locating any portion of the race course within Ambrose Channel, no racers shall be permitted to transmit Ambrose Channel during any part of the race. No racers shall be permitted to race north of the Verrazano Bridge at any time one hour prior to, or after sunset. The event will be on an overall timed basis, with boats starting on an individual basis, at a proposed interval of 5 minutes or less. Racers will be required to stop at Manasquan, NJ for check-in.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 100 of title 33, Code of Federal Regulations as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.111 is added to read as follows:

§ 100.111 Miss Liberty Challenge Cup.

(a) *Regulated Area.* The regulated area is in Federal Anchorage #20C, within a 300 yard radius the race committee boat, which will be located north of Liberty Island Lighted Gong Buoy #29 (LLNR 32305).

(b) *Special Local Regulations.*

(1) Commander, Coast Guard Group New York reserves the right to delay, modify or cancel the race as conditions or circumstances require.

(2) The race course and starting line shall be designed such that no part of the race course is in Ambrose Channel.

(3) No racers shall be permitted to race north of the Verrazano Bridge at any time one hour prior to, or after sunset.

(4) No person or vessel may transit through the regulated area during the effective period of regulation unless participating in the vent or as authorized by the sponsor or Coast Guard patrol commander. The patrol commander will be monitoring channel 16 VHF.

(5) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(c) *Effective Period.* These regulations, if adopted, will be effective from 9 a.m. through 5 p.m. on August 9th, 1991.

Dated: June 4, 1991.

R.I. Rybacki,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 91–16638 Filed 7–11–91; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

(FR1–3973–1)

National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete Beachwood/Berkeley Wells Site from the National Priorities List: Request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region II Office announces its intent to delete the Beachwood/Berkeley Wells site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of New Jersey have determined that no further fund-financed remedial actions are appropriate at this site and actions taken to date are protective of public health, welfare, and the environment.

DATES: Comments concerning this site may be submitted on or before August 12, 1991.

ADDRESSES: Comments may be mailed to: Kathleen C. Callahan, Director, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, room 737, New York, NY 10278.

Comprehensive information on this site is available through the EPA Region II public docket, which is located at EPA's Region II Office in New York City, and is available for viewing, by appointment only, from 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays. Requests for appointments should be directed to: Ms. Sharon L. Atkinson, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, room 711, New York, NY 10278, (212) 264–1217.

Background information from the Regional public docket is also available for viewing at the Site's information repositories located at:

Berkeley Township Library, 42 Station Road, Bayville, NJ 08721.
Beachwood Borough Library, 126 Beachwood Boulevard, Beachwood, NJ 08722.
New Jersey Department of Environmental Protection, 401 East State Street, 6th Floor, Trenton, NJ 08625.

FOR FURTHER INFORMATION CONTACT:

Ms. Sharon L. Atkinson, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, room 711, New York, NY 10278, (212) 264–1217.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Environmental Protection Agency (EPA) Region II announces its intent to delete the Beachwood/Berkeley Wells Site, Ocean County, New Jersey, from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

The EPA will accept comments concerning the Beachwood/Berkeley Wells site for thirty days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider whether any of the following criteria have been met:

(i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or

(iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

III. Deletion Procedures

The NCP provides that EPA shall not delete a site from the NPL until the State in which the release was located has concurred, and the public has been afforded an opportunity to comment on the proposed deletion. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts. The NPL is designed primarily for informational purposes and to assist Agency management.

EPA Region II will accept and evaluate public comments before making a final decision to delete. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community may be the most pertinent to deletion decisions. The following procedures were used for the intended deletion of the Beachwood/Berkeley Wells site:

1. EPA Region II has recommended deletion and has prepared the relevant documents.

2. The State of New Jersey has concurred with the deletion decision.

3. Concurrent with this National Notice of Intent to Delete, a notice has been published in local newspapers and has been distributed to appropriate federal, state and local officials, and other interested parties. This notice announces a thirty-day public comment period on the deletion package, which starts two weeks from the date of the notice, July 12, 1991, and will conclude on August 12, 1991.

4. The Region has made all relevant documents available in the Regional Office and local site information repositories.

The comments received during the notice and comment period will be evaluated before any final decision ismade. EPA Region II will prepare a Responsiveness Summary, which will address the comments received during the public comment period.

The deletion will occur after the EPA Regional Administrator places a notice in the **Federal Register**. The NPL will reflect any deletions in the next final update. Public notices and copies of the Responsiveness Summary will be made available to local residents by the Region II Office.

V. Basis for Intended Site Deletion

The Beachwood/Berkeley Wells Superfund site covers the 2.7-square mile Borough of Beachwood, and the 40-2square mile Township of Berkeley in eastern Ocean County, New Jersey.

In March 1982, the New Jersey Department of Environmental Protection (NJDEP) investigated a public complaint in Beachwood Borough involving possible contamination in drinking water. One of four subsequently sampled wells contained levels of lead at approximately four times the Federal Interim Drinking Water Standard (FIDWS) of 50 parts per billion (ppb).

The NJDEP and Ocean County Health Department (OCHD) conducted a drinking water sampling program for Beachwood Borough in the summer of 1982. Approximately 15 percent of the 601 wells sampled had lead levels above the FIDWS. In a subsequent, expanded sampling program, approximately three percent of 935 Berkeley Township wells tested had levels above the FIDWS. In addition, lead analysis was performed on selected samples from surface and subsurface soils, and suspected surface water sources. No geographical pattern emerged, and the contamination could not be related to a particular source. The borough and the township had no likely industry which could have produced the lead contamination.

The NJDEP proposed the site for inclusion on the NPL in December of 1982 based on a MITRE ranking of 42.24. On January 13, 1984, the United States Environmental Protection Agency (EPA) made a grant award of $632,540 to NJDEP to conduct a Remedial Investigation/Feasibility Study (RI/FS).

In May of 1985, the EPA, NJDEP, and United States Geological Survey (USGS) formed a task force to revise the RI scope of work. This revision in scope focused on the May 1985 USGS Interim Report entitled "Lead Contamination of the Coastal Plain." The study demonstrated that elevated lead concentrations in the drinking water

could be directly related to corrosive groundwater acting on lead components in the plumbing systems. Groundwater in the Beachwood/Berkeley area exhibited varying degrees of corrosiveness (acidity), and the USGS study included investigations in the township. An 11-month project delay resulted from the redesign of the RI to focus on the effects of corrosive groundwater on water supply systems.

The NJDEP-lead RI was performed between April 1986 and July 1987. The RI Report, along with the Remedial Response Objectives and Identification of Alternatives Report, was finalized in May of 1988. The RI concluded that the major portion of lead contamination resulted from the leaching of lead components in wells and plumbing systems, with minor amounts contributed through environmental media. Leaching could be further acerbated where relatively acidic groundwater reacted with plumbing system components, as evidenced in the Berkeley Township area.

In accordance with section 104(a)(3) of the Superfund Amendments Reauthorization Act (SARA), the selected alternative for the Beachwood/Berkeley Wells site was to take no remedial action under the Superfund Program. Section 104(a)(3) prohibits the use of Superfund monies to undertake remedial action in the following instances:

> The President shall not provide for a removal or remedial action under this section in response to a release or threat of release—
>
> (A) of a naturally occurring substance in its unaltered form, or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found;
>
> (B) from products which are part of the structure of, and result in exposure within residential buildings or businesses or community structures; or
>
> (C) into public or private drinking water supplies due to deterioration of the system through ordinary use.

Although the no action remedy selected for this site does not address the protection of public health, independent state, county and local actions have been undertaken since the onset of the identified problem to address health protection including:

—In 1982, OCHD closed private wells with elevated lead levels and provided bottled water for affected residents in Beachwood and Berkeley.

—In 1983, after issuance of an administrative order by NJDEP, Beachwood Borough completed construction of an extension to the public water supply system to service all Beachwood residents. This assures that the water received by residents meets federal standards for drinking water.

—In 1986, OCHD passed an ordinance requiring a prerequisite water test to be paid by all residential real estate purchasers prior to issuance of a certificate of occupancy. Should the water test fail federal standards for drinking water, a follow-up confirmatory test is required. A confirmed water test failure requires correction of the problem prior to the sale of the property.

—In 1988, the Berkeley Township Municipal Utilities Authority was formed to explore construction of a public water supply. The sparse population of certain areas of the township precludes the economic feasibility of extending public water to these areas at present. However, other population centers within the township are viable areas to receive public water in the near future.

—NJDEP has an ongoing, state-wide, public education program underway to identify the consequences of lead exposure and the measures homeowners can take on an interim and long-term basis to reduce their risk. NJDEP is also conducting an evaluation of corrosion control needs and practices of all public water companies in the state. This information, coupled with the EPA-revised drinking water regulations for lead, will prompt NJDEP to take appropriate steps, including enforcement actions if necessary, to insure all public water systems meet regulated standards for drinking water.

Dated: May 3, 1991.

Constantine Sidamon-Eristoff,

Regional Administrator, USEPA Region II.

[FR Doc. 91-16262 Filed 7-11-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-588; RM-7522]

Radio Broadcasting Services; Jackpot, Nevada

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial of petition.

SUMMARY: The Commission denies the petition for rule making filed by Dale A. Ganske requesting the allotment of Channel 253A to Jackpot, Nevada, as the community's first local aural transmission service. See 55 FR 50048, December 4, 1990. We find that there is insufficient factual basis to conclude that Jackpot is a "community" for allotment purposes. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-588, adopted June 24 , 1991, and released July 8, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW.,Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-16553 Filed 7-11-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB

Endangered and Threatened Wildlife and Plants; Notice of Public Hearing on Proposed Designation of Critical Habitat for Six Endangered Forest Species From Guam

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing.

SUMMARY: The U.S. Fish and Wildlife Service (Service), under the Endangered Species Act of 1973, as amended (Act), gives notice that a public hearing will be held on the proposed designation of critical habitat for six endangered forest species from Guam: The little Mariana fruit bat (*Pteropus tokudae*). Mariana fruit bat (*Pteropus mariannus mariannus*). Guam broadbill (*Myiagra freycineti*). Mariana crow (*Corvus kubaryi*). Guam Micronesian kingfisher (*Halcyon cinnamomina cinnamomina*), and Guam bridled white-eye (*Zosterops*

conspicillatus conspicillatus). The hearing will allow all interested parties to submit oral or written comments on the proposal. The proposed rule to designate critical habitat was published June 14, 1991 at 56 FR 27485.

DATES: The public hearing will be held from 9 a.m. to 11 a.m., 1 p.m. to 4 p.m., and 6 p.m. to 9 p.m. on Wednesday, July 31, in Agana, Gaum. The public comment period closes on August 13, 1991.

ADDRESSES: The public hearing will be held in the Governor's cabinet conference room at the Adelup office complex, Agana, Guam. Written comments and materials should be sent directly to the Field Supervisor, U S. Fish and Wildlife Service, Pacific Islands Office, P.O. Box 50167, Honolulu, Hawaii 96850. Written submissions will be given the same weight and consideration as oral comments presented at the hearing. Comments and materials received will be available for public inspection during normal business hours, by appointment at the above address.

FOR FURTHER INFORMATION CONTACT: Robert P. Smith. Field Supervisor, at the above Honolulu address (telephone 808/541–2749 or FTS 551–2749).

SUPPLEMENTARY INFORMATION:

Background

The Service proposes to designate critical habitat for six endangered forest species on Guam: The little Mariana fruit bat (*Pteropus tokudae*), Mariana fruit bat (*Pteropus mariannus mariannus*), Guam broadbill (*Myiagra freycineti*). Mariana crow (*Corvus kubaryi*), Guam Micronesian kingfisher (*Halcyon cinnamomina cinnamomina*), and Guam bridled white-eye (*Zosterops conspicillatus conspicillatus*) These species are found in the Mariana Islands in the western Pacific in the Territory of Guam and the Commonwealth of the Northern Mariana Islands, and are threatened by one or more of the following: Poaching, predation by the introduced brown tree snake, and habitat loss. These species were listed as endangered on August 27, 1984 (49 FR 33881). Critical habitat was not designated at the time of listing because it was not deemed prudent. Federal actions that may affect the areas designated as critical habitat would be subject to consultation with the Service, pursuant to section 7(a)(2) of the Act. The proposed rule to designate critical habitat, published on June 14, 1991 (56 FR 27485), includes a total of 16,893 acres in northern Guam and 7,669 acres in southern Guam. The land within the proposed critical habitat for these species is primarily in Federal ownership, with a smaller percentage owned by the Government of Guam and private landowners. Section 4 of the Act requires the Service to consider economic impacts prior to making a final decision on the size and scope of critical habitat. The Service solicits data and comments from the public on all aspects of this proposal.

Subsection 4(b)(5)(E) of the Act requires that a public hearing be held, if requested, within 45 days of the publication of a proposed rule. Due to anticipated requests for public hearings, the Service has scheduled a hearing for July 31, 1991, from 9 a.m. to 11 a.m., 1 p.m. to 4 p.m., and 6 p.m. to 9 p.m., in the Governor's cabinet conference room at the Adelup office complex, Agana. Guam.

Parties wishing to make statements for the record should bring a copy of their statements to the hearing. Oral statements may be limited in length, if the number of parties present at the hearing necessitates such a limitation. There are, however, no limits to the length of written comments or materials presented at the hearing or mailed to the Service. Written comments should be submitted to the Service in the **ADDRESSES** section. Written submissions will be given the same weight and consideration as oral comments presented at the hearing. The comment period closes on August 13. 1991.

Author

The primary author of this notice is Leslie Propp, Staff Biologist, U.S Fish and Wildlife Service, Eastside Federal Complex. 911 N.E. 11th Avenue. Portland, Oregon 97232 (telephone 503/231–6131 or FTS 429–6131).

Authority: The authority for this action is the Endangered Species Act (16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.)

List of Subjects in 50 CFR Part 17

Endangered and threatened species. Exports. Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: July 3, 1991.

Marvin L. Plenert,

Regional Director, Region 1, U.S Fish and Wildlife Service.

[FR Doc. 91–16338 Filed 7–11–91; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 56, No. 134
Friday, July 12, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Hiawatha National Forest; Grand Island National Recreation Area Advisory Commission Meeting

AGENCY: Forest Service, USDA.

ACTION: Grand Island Advisory Commission Meeting.

SUMMARY: The Grand Island Advisory Commission will meet on July 29 at 8:30 am at the Forest Inn on M–28 in Munising, Michigan. An agenda for the two day meeting includes updating members on the Island planning progress to date, a review of laws and regulations governing Forest Service management, development of internal operating procedures, election of a chairperson, and developing an action plan for future meetings.

Interested members of the public are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions about this meeting to Art Easterbrook. Staff Officer. Hiawatha National Forest, 2727 N Lincoln Road, Escanaba, Michigan 49829. (906) 786–4062.

Dated: July 8, 1991.

William F. Spinner,

Forest Supervisor.

[FR Doc. 91–16616 Filed 7–11–91; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Montana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Montana Advisory Committee to the Commission will be held from 1 p.m. until 3:30 p.m. on Thursday, August 1, 1991, at the Radisson Northern Hotel, Broadway and 1st Avenue North, Billings, MT 59101. The purpose of the meeting is to discuss current civil rights issues and plan for future activities.

Persons desiring additional information should contact Committee Chairperson Betty Babcock or William F. Muldrow, Director of the Rocky Mountain Regional Office, 303–844–6716 (TDD 303–844–6720). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 7, 1991.

Carol Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91–16617 Filed 7–11–91; 8:45 am]

BILLING CODE 6335–01–M

Agenda and Notice of Public Meeting of the Wyoming Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Wyoming Advisory Committee to the Commission will be held from 10:30 a.m. until 1 p.m. on Saturday, August 10, 1991, at the Holiday Inn, 300 W. "F" Street, Casper, WY 82601. The purpose of the meeting is to discuss current civil rights issues and plan for future activities.

Persons desiring additional information should contact Committee Chairperson Donald L. Tolin or William F. Muldrow, Director of the Rocky Mountain Regional Office, 303–844–6716 (TDD 303–844–6720). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 7, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91–16618 Filed 7–11–91; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 910651–1151]

Current Industrial Reports

AGENCY: Bureau of the Census, Commerce

ACTION: Notice of Consideration

SUMMARY: The Bureau of the Census proposes to conduct a one-time survey on the adoption of advanced technological equipment and software in the manufacturing industries. The survey will be conducted for 1991 under the authority of title 13, United States Code, sections 182, 224, and 225. The data collected will provide policymakers in Government and industry important information that is not available from any other source.

DATES: Any suggestions or recommendations concerning the proposed survey on technology must be submitted on or before August 12, 1991 in order to receive consideration.

ADDRESSES: Director, Bureau of the Census, Washington, DC 20233.

FOR FURTHER INFORMATION CONTACT: Gaylord Worden on (301) 763–5850.

SUPPLEMENTARY INFORMATION: The next economic censuses will be conducted for 1992. The data collected in this survey will be within the general scope and of the type and character of those inquiries covered in the economic censuses. The establishments included in this survey will be a sample of all manufacturing establishments in Standard Industrial Classification Major Groups 34–38. Data resulting from this survey will be used to assess the level of investment and barriers to the acquisition of advanced technology. These data are not available from any nongovernmental source or other governmental sources. This survey has been submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended. Copies of the proposed form and a description of the collection methods are made available on request to the Director, Bureau of the Census, Washington, DC 20233.

Dated: July 3, 1991.

Barbara Everitt Bryant,

Director, Bureau of the Census.

[FR Doc. 91-16623 Filed 7-11-91; 8:45 am]

BILLING CODE 3510-07-M

Bureau of Export Administration Transportation and Related Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Transportation and Related Equipment Technical Advisory Committee will be held August 1, 1991, 9:30 a.m., Herbert C. Hoover Building, room 1617-F, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to transportation and related equipment or technology.

Agenda: General Session

1. Opening Remarks by the Chairman or Commerce Representative.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Review of Final COCOM Core List Actions.
5. Discussion of Enhanced Proliferation Control Initiatives (EPCI)
6. Update of the Missile Technology Control Regime Annex Revisions.
7. Review of International Traffic and Arms Regulations (ITAR) Rationalization.

Executive Session

8. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, in order to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the below listed address: Ms. Ruth D. Fitts, U.S. Department of Commerce/BXA, Office of Technology & Policy Analysis, 14th & Constitution Avenue, NW., room 1621, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 28, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202-377-4959.

Dated: July 8, 1991.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analyses.

[FR Doc. 91-16612 Filed 7-11-91; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

Automotive Parts Advisory Committee; Closed Meeting

ACTION: Notice of Closed Meeting of Automotive Parts Advisory Committee.

SUMMARY: The U.S. Automotive Parts Advisory Committee (the "Committee") advises U.S. Government officials on matters relating to the implementation of the Fair Trade in Auto Parts Act of 1988. The Committee: (1) Reports annually to the Secretary of Commerce on barriers to sales of U.S.-made auto parts and accessories in Japanese markets; (2) assists the Secretary in reporting to the Congress on the progress of sales of U.S.-made auto parts in Japanese markets, including the formation of long-term supplier relationships; (3) reviews and considers data collected on sales of U.S.-made auto parts to Japanese markets; (4) advises the Secretary during consultations with the Government of Japan on these issues; and (5) assists in establishing priorities for the Department's initiatives to increase U.S.-made auto parts sales to Japanese markets, and otherwise provide assistance and direction to the Secretary in carrying out these initiatives. At the meeting, committee members will receive briefings on the status of ongoing consultations with the Government of Japan and will discuss specific trade and sales expansion programs related to U.S.-Japan automotive parts policy.

DATE AND LOCATION: The meeting will be held on Thursday, August 22, 1991 from 9 a.m. to 4 p.m. in room 3407, Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Stuart Keitz, Office of Automotive Industry Affairs, Automotive Affairs and Consumer Goods Sector, Trade Development, Main Commerce, room 4036, Washington, DC 20230, telephone: (202) 377-0669.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel formally determined on June 24, 1991, pursuant to section 10(d) of the Federal Advisory Act, as amended, that the series of meetings or portions of meetings of the Committee and of any subcommittee thereof, dealing with privileged or confidential commercial information may be exempt from the provisions of the act relating to open meeting and public participation therein because these items will be concerned with matters that are within the purview of 5 U.S.C. 552b(c)(4) and (9)(B). A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the International Trade Administration Records Inspection Facility, room 4104, Main Commerce.

Dated: July 8, 1991.

Henry Misisco,

Director, Office of Automotive Industry Affairs.

[FR Doc. 91-16668 Filed 7-11-91; 8:45 am]

BILLING CODE 3510-DR-M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Notice of Completion of Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of Panel Review of Final Determination in an Administrative Review made by the Department of Commerce, International Trade Administration, Import Administration, respecting Iron Construction Castings from Canada, Secretariat File No. USA-91-1904-02.

SUMMARY: Pursuant to rules 73(2) and 80(1)(a) of the Article 1904 Panel Rules ("Rules"), the Panel Review of the final determination described above was completed on July 2, 1991, the date following the filing of a consent motion to terminate the binational panel review of this matter.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 4012, 14th and Constitution Avenue, Washington, DC. 20230, (202) 377–5438.

SUPPLEMENTARY INFORMATION: On June 20, 1991, LaPerle Foundry, Inc. and Mueller Canada, Inc., filed a Request for Panel Review with the United States Section of the Binational Secretariat pursuant to Article 1904 of the United StatesCanada Free-Trade Agreement. Panel review was requested of the Final Determination in an Administrative Review respecting Iron Construction Castings from Canada made by the International Trade Administration, Import Administration, File Number A–122–503, and published in the **Federal Register** on May 21, 1991 (56 FR 23274). The Binational Secretariat assigned Case Number USA–91–1904–02 to this Request.

On July 1, 1991, LaPerle Foundry, Inc. and Mueller Canada, Inc., filed a Notice of Motion Requesting Dismissal of the Panel Review. No other participants filed Requests for Panel Review nor any other pleading in this binational panel review.

Rule 73(2) provides that "where a Notice of Motion requesting termination of a panel review filed by a participant is consented to by all the participants and an affidavit to that effect is filed, or where all participants file Notices of Motion requesting termination, the panel review is terminated and, if a panel has been appointed, the panelists are discharged."

Rule 80(1)(a) provides that the termination shall be effective on the day after the day on which the motion is filed. Pursuant to the authorities cited above, this Notice of Completion of Panel Review was effective on July 2, 1991.

Dated: July 3, 1991.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 91–16613 Filed 7–11–91; 8:45 am]

BILLING CODE 3510–GT–M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Shickrey Anton From an Objection by the State of South Carolina

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of decision.

On May 21, 1991, the Secretary of Commerce (Secretary) issued a decision in the consistency appeal of Mr. Shickrey Anton (Appellant). The Appellant had applied to the U.S. Army Corps of Engineers (Corps) for a permit to fill wetlands to construct a commercial business on the property. In conjunction with the Federal permit application, the Appellant submitted to the Corps for the State of South Carolina's (State) review under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, as amended, (CZMA), 16 U.S.C. 1456 (c) (3)(A), a certification that the proposed activity is consistent with the State's Federally-approved Coastal Management Program.

On August 25, 1989, the State objected to the Appellant's consistency certification for the proposed project on the ground that it violates the State Coastal Management Program's prohibition of the filling of wetlands. As an alternative that would be consistent with the State's Coastal Management Program, the State recommended the deletion of almost all fill and the construction of a bridge in order to connect the two high-ground portions of the property. Under CZMA section 307(c)(3)(A) and 15 CFR 930.131 (1988), the State's consistency objection precludes the Corps from issuing a permit for the activity unless the Secretary finds that the activity is either consistent with objectives or purposes of the CZMA (Ground I) or necessary in the interest of national security (Ground II).

Upon consideration of the information submitted by the Appellant, the State and several Federal agencies, the Secretary made the following findings pursuant to 15 CFR 930.121: The proposed project, in particular the proposed filling of wetlands for commercial development, will cause adverse effects on the resources of the coastal zone, when performed separately or in conjunction with other activities, substantial enough to outweigh its contribution to the national interest. As such the proposed project is not consistent with the objectives or purposes of the CZMA. Because the Appellant's proposed project failed to satisfy the requirements of Ground I, and the Appellant did not plead Ground II, the Secretary did not override the State's objection to the Appellant's consistency certification, and consequently, the proposed project may not be permitted by Federal agencies. Copies of decisions may be obtained from the contact person listed below.

FOR ADDITIONAL INFORMATION CONTACT: Roger Eckert, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce 1825 Connecticut Avenue, NW., suite 603, Washington, DC 20235, (202) 673–5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: July 3, 1991.

Thomas A. Campbell,

General Counsel.

[FR Doc. 91–16566 Filed 7–11–91; 8:45 am]

BILLING CODE 3510–08–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List: Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing the blind or other severely handicapped.

EFFECTIVE DATE: August 12, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On March 22, May 17 and 24, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (56 FR 12193, 22848 and 23876) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodities and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities

and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Retainer
5340–00–409–8491
Scarf, Headover
8440–01–291–5451

Services

Janitorial/Custodial, Federal Building, U.S. Post Office and Courthouse, 301 West Main Street, Benton, Illinois
Janitorial/Custodial, Clock Tower, Annex Buildings and Connecting Walkway, Rock Island, Illinois
Janitorial/Custodial, U.S. Army Reserve Center, Anderson, South Carolina
Medical Transcription, Veterans Affairs Medical Center, 2002 Holcombe Boulevard, Houston, Texas.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 91–16645 Filed 7–11–91; 8:45 am]

BILLING CODE 6820–33–M

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list .

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 12, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing the blind or other severely handicapped.

It is proposed to add the following commodity and services to the Procurement List:

Commodity

Gown, Operating, Surgical
6532–00–083–6536

Services

Catering Service, Salt Lake City Military Entrance Processing Station, Fort Douglas, Utah
Food Service Attendant, Norfolk Naval Shipyard, Portsmouth, Virginia
Janitorial/Custodial, The Pentagon (all office space on the fifth floor), Washington, DC

Beverly L. Milkman,

Executive Director,

[FR Doc. 91–16646 Filed 7–11–91; 8:45 am]

BILLING CODE 6820–33–M

Procurement List Addition Correction

In notice document 91–14832, appearing on page 28540 in the issue of Friday, June 21, 1991 the following commodity is corrected:

Holder, Card Label 9905–00–045–3635 should read 9905–00–045–3626.

Beverly L. Milkman,

Executive Director.

[FR Doc. 91–16647 Filed 7–11–91; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35)

Title, Applicable Form, and Applicable OMB Control Number: Survey of Air Force SMA Business Innovation Research (SBIR) Contract Awardees, No Form Required, OMB No. 0701–0117.

Type of Request: Reinstatement.

Average Burden Hours/Minutes per Response: 12 Minutes.

Responses per Respondent: 1.

Number of Respondents: 450.

Annual Burden Hours: 90.

Annual Responses: 450.

Needs and Uses: The survey will provide data for a book which will be used to promote "private sector commercialization," and to accumulate information for the mandated report that is due to Congress by 31 Dec 91. The information for the survey will be provided by small businesses that have participated in the SBIR program during the two-year time frame of the book.

Affected Public: Businesses or other for-profit and Small businesses or organizations.

Frequency: Biennially.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Peter N. Weiss. Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: July 8, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–16625 Filed 7–11–91; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Application for Training Leading to a Commission in the United States Air Force; AF Form 56; OMB No. 0701–0001.

Type of Request: Reinstatement.
Average Burden Hours/Minutes per Response: 20 Minutes.
Responses per Respondent: 1.
Number of Respondents: 3,500.
Annual Burden Hours: 1,167.
Annual Responses: 3,500.
Needs and Uses: This form is needed to support Air Force officer procurement programs. Civilians and active duty airmen who apply for training leading to a commission complete the form. Air Force application processing activities and approval authorities use the form to select applicants who qualify for officer training.
Affected public: Individuals or households.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Mr. Edward C. Springer.
Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.
DOD Clearance Officer: Mr. William P. Pearce.
Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: July 9, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–16626 Filed 7–11–91; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Professional Evaluation, Department of Defense Dependents Schools; SD Form 778, OMB #0704–0035.
Type of Request: Reinstatement.
Average Burden Hours/Minutes Per Response: .5 hours.
Responses Per Respondent: 1.
Number of Respondents: 11,000.
Annual Burden Hours: 5,500.
Annual Responses: 11,000.
Needs and Uses: The information provides means for evaluating the applicant's abilities and personal traits which may predict success in an overseas teaching assignment with DoDDS.
Affected Public: Individuals or households.
Frequency: On occasion.
Respondent's Obligation: Voluntary.
OMB Desk Office: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.
DOD Clearance Officer: Mr. William P. Pearce. Written request for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: July 9, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–16627 Filed 7–11–91; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Department of Defense Dependents Schools Voluntary Questionnaire, SD Form 779, OMB #0704–0223.
Type of Request: Reinstatement.
Average Burden Hours/Minutes per Response: .16666 hours.
Responses per Respondent: 1.
Number of Respondents: 5,500.
Annual Burden Hours: 917.
Annual Responses: 5,500.
Needs and Uses: Information collected from the applicant applying for DoDDS employment provides a means of evaluating the effectiveness of the Federal EEO program, including handicapped applicants, and DoDDS recruiting efforts.
Affected Public: Individuals or households.
Frequency: On occasion.
Respondent's Obligation: Voluntary.
OMB Desk Office: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.
DOD Clearance Officer: Mr. William P. Pearce. Written request for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: July 9, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–16628 Filed 7–11–91; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Supplemental Application for Employment with Department of Defense Overseas Dependent Schools, SD Form 776, OMB #0704–0052.
Type of Request: Reinstatement.
Average Burdern Hours/Minutes per Response: .5 hours.
Responses per Respondent: 1.
Number of Respondents: 5,500.
Annual Burden Hours: 2,750.
Annual Responses: 5,500.
Needs and Uses: The information provides brief personal, professional, and academic data for use in screening applications for overseas employment with DoDDS.
Affected Public: Individuals or households.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Office: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.
DOD Clearance Officer: Mr. William P. Pearce. Written request for copies of

the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: July 9, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–16629 Filed 7–11–91; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Department of Defense Dependents Schools Verification of Professional Educator Employment for Salary Rating Purposes, SD Form 809, OMB #0704–0226.

Type of Request: Reinstatement.

Average Burden Hours/Minutes per Response: .08333 hours.

Responses per Respondent: 1.

Number of Respondents: 11,000.

Annual Burden Hours: 917.

Annual Responses: 11,000.

Needs and Uses: Information collected to verify an applicant's previous experience which is used to establish rate of pay.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Office: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at Office of Management and Budget, Desk Officer, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written request for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: July 9, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–16630 Filed 7–11–91; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Application for Appointment as Reserves of the Air Force or USAF Without Component; AF Form 24; OMB No. 0701–0096.

Type of Request: Reinstatement.

Average Burden Hours/Minutes per Response: 20 Minutes.

Responses per Respondent: 1.

Number of Respondents: 5,500.

Annual Burden Hours: 1,833.

Annual Responses: 5,500.

Needs and Uses: This form is used by Air Force application processing activities and approval authorities to select applicants who qualify for appointment as Reserves of the Air Force, or during time of war or national emergency as USAF Without Component.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington Virginia 22202–4302.

Dated: July 9, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–16631 Filed 7–11–91; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army; Corps of Engineers

Intent To Prepare a Joint Draft Environmental Impact Statement (DEIS)/Draft Environmental Impact Report (DEIR) for the Proposed Port Disney Project, Long Beach, CA and a Department of Army Permit

AGENCY: U.S. Army Corps of Engineers, Los Angeles District.

ACTION: Notice of intent to prepare a joint draft environmental impact statement (EIS)/environmental impact report (EIR).

SUMMARY: The EIS is needed to support a future Department of the Army permit decision regarding the proposed Port of Disney project in Long Beach, California, pursuant to section 10 of the River and Harbor Act of 1899 and section 404 of the Clean Water Act. The proposed project is intended to revitalize the urban waterfront areas (Queensway Bay) of the City and Port of Long Beach, to provide a variety of recreational and educational opportunities for the public, and to generate economic benefit for the permit applicants through the creation of an oceanfront visitor-serving destination resort consisting of an ocean-oriented theme park, cruise ship terminal, marinas and supporting shoreline hotel, retail, and other recreational facilities. The proposed project would require dredging in San Pedro Bay and placement of fill material in Queensway Bay to create approximately 245 acres of new emerged land (landfill). The City of Long Beach, the Port of Long Beach, the Long Beach Redevelopment Agency, and The Walt Disney Company are co-applicants for the Port Disney project in Long Beach, California. The U.S. Army Corps of Engineers ("Corps") will serve as the lead agency in compliance with the National Environmental Policy Act (NEPA). The purpose of the EIS/EIR is to assess the potential environmental impacts associated with the proposed project. The Corps' primary concern involves the potential effects associated with 245 acres of landfill and work or structures affecting "Navigable waters of the United States."

Concerns about the proposed action should be received by August 12, 1991 to assist in the EIS/EIR scoping process and should be addressed to: Colonel Charles Thomas, District Engineer, ATTN: Mr. Ron Ganzfried, Environmental Resources Branch, U.S. Army Corps of Engineers, 300 North Los Angeles Street, Los Angeles, California 90012–2325, (213) 894–6079.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

The City of Long Beach, the Port of Long Beach, the Long Beach Redevelopment Agency, and The Walt Disney Company are co-applicants for the Port Disney project. The purpose of the Port Disney project is revitalization of the urban waterfront areas (Queensway Bay) of the City of Long Beach and Port of Long Beach to provide a variety of recreational and educational opportunities for the public and to generate economic benefit for the permit applicants through the creation of an oceanfront visitor-serving destination resort consisting of an ocean-oriented theme park, cruise ship terminal, marinas and supporting shoreline hotel, retail, and other recreational facilities. Visitation to the project must be adequate to provide an economic base capable of supporting key project components, including marine research, eduation, and public access and recreation.

The proposed project would require dredging in San Pedro Bay and placement of fill in Queensway Bay to create approximately 245 acres of landfill. Components that would be developed on the new landfill include: DisneySea, including theme park, maintenance and support facilities, and parking elements (172 acres); International Port/marinas (30 acres); crusie ship termials (17 acres); public parks (16 acres); and other public access elements (10 acres). In addition, the project includes improvements to local and region-serving infrastructure to serve Port Disney. The project scope includes the public agency actions required to amend local plans and to comply with state and Federal environmental regulatory programs, policy and law. The 245 acres of landfill would require specific approval by the Corps of Engineers.

The Port Disney Project Would Include

DisneySea Theme Park

DisneySea, 208 acres of ocean-oriented theme park attractions and supporting facilities including parking, to be located on the Port-side of the project, would utilize approximatley 172 acres of landfill and 36 acres of existing land. It would include facilities and activities for participant and spectator recreation, entertainment, education and research, as well as food and beverage service and specialty retail facilities. Parking for the theme park would be located adjacent to the park in a four-story parking garage with 17,000 spaces. Support facilities would be included in the theme park area.

Overnight Visitor Accommodations

A total of 4,200 hotel rooms in six hotels and 70 recreational vehicles (RV) spaces are proposed for the project. Each of these hotels is planned to include ancillary facilities, such as meeting and banquet facilities, restaurants, specialty retail, and other guest-serving amenities. Guest and employee parking for hotels would be located at each site.

International Port

On the Port-side adjacent to the theme park, the International Port would offer special retail-entertainment elements, harbor excursions, a ferry service linking the two sides of Queensway Bay, and a waterfront promenade leading to the theme park entry plaza. Administrative offices for DisneySea would also be included in the International Port/Gate area.

Marinas

Proposed public boating facilities including approximately 400 slips would be located at the Queensway Bay Marina and Pier J Marina. Surface parking, with a total of 270 spaces, also would be available adjacent to the marinas.

Public Parks and Open Space

The project plans to increase overall public park area by 45 acres from an existing 52 acres to a total of 97 acres. The City-side of the project would include two new parks (Tidelands and Catalina Park) and improvements to the existing Shoreline Aquatic Park. Portions of existing Shoreline Aquatic Park would be designated for hotel use under the proposed plan. The port-side of the project would include four new parks (River Park, Treasure Lagoon, Fisherman's Walk, and Pier J Marina Park). In addition, public walkways, bikeways, and other public areas would be provided.

Cruise Ship Terminal/Pier J Marina

The Cruise Ship Terminal would be situated at the southern end of the property and would include five berths. Parking spaces for this project element would be located adjacent to the facilities and across from Harbor Scenic Drive. The facility also would include a public park providing access to fishing piers.

2. Study Alternatives

The EIS/EIR will address various alternatives in addition to the project as proposed, including but not limited to the following:

a. No Action Alternative

The no action alternative involves no development of an ocean-oriented Disney theme park, cruise ship terminal, marina facilities, or new parklands and shoreline public access amenities. Two hotels and supporting retail have previously been approved for the area near the Convention Center on the City of Long Beach shoreline. The development of these would still be assumed without the Port Disney project. No dredge or fill activities would occur in Queensway Bay.

b. Mixed-Use Development Alternative

Under the mixed-use development alternative, no ocean-oriented Disney theme park and no new parklands would be constructed. On the City side, new hotels would be included as currently planned near the Convention Center, and additional hotel rooms would be added on the Port side. On the Port side, project components would also include retail, eating establishments, and substantial office space, as well as transient mooring and a water side promenade for recreation/public access. No new fill would be required.

c. No Fill With Theme Park Alternative

This alternative includes the development of an ocean-oriented Disney theme park on existing Port land, displacing some Port tenants. The cruise ship terminal, marina facilities, hotels, and supporting retail would be in the same amounts as for the proposed project, but sited differently. Less parkland and shoreline public access amenities would be constructed under this alternative. New dredge and fill activities in Queensway Bay would include approximately 15 acres of landfill for a marina and cruise ship terminal.

d. Reduced Fill Alternative (No Parking on New Fill)

The reduced fill alternative includes the development of an ocean-oriented Disney theme park on less landfill area than the Proposed Action which would be achieved by providing associated parking on existing land, not new landfill. The marina facilities, hotels, retail, parkland and public access amenities would all be generally the same as for the proposed project. This alternative would reduce new landfill by about 25% and would also reduce the number of cruise ship berths to four.

e. Reduced Program Alternative

The reduced program alternative includes the development of a smaller ocean-oriented Disney theme park, a reduced cruise ship terminal, smaller marina facilities, fewer hotels rooms, less supporting retail and more parks and shoreline public access acreage. New dredge and fill activities in Queensway Bay would produce approximately 200 acres of new landfill.

3. The EIS/EIR Scoping Process

Potentially significant issues identified to date include impacts to oceanographic and water resources, air quality, geology and seismicity, liquefaction, public services and utilities, transportation and circulation, biological resources, land and water use, recreation, energy, public health and safety, aesthetics including light and glare, noise, socioeconomics and cultural resources. Public comments received at scoping meetings and in writing will be considered in developing the scope of the EIS/EIR.

Key tasks of the EIS/EIR will be the analysis of the above alternatives to the applicant's proposed project and the identification and analysis of mitigation measures for potentially significant impacts. The analysis will also consider variations in the size, location and number of project components within the area of the proposed project.

An extensive mailing list is being developed which includes Federal, state, and local agencies and other interested public and private organizations and persons. Formal coordination with appropriate Federal, state, and local agencies will be conducted according to the requirements of the National Environmental Policy Act (NEPA) and other pertinent laws.

4. Public Meetings

EIS/EIR Scoping meetings, all in Long beach, are scheduled as follows:

July 17, 1991, 7 p.m.: Long Beach Gas Department, 2400 E. Spring Street.
July 18, 1991, 2 p.m.: Main Library Auditorium, 101 Pacific Avenue.
July 18, 1991, 7 p.m.: Stanford Middle School, 5871 E. Los Arcos Street.

Subsequent meetings will be held during the public review and comment period of the draft EIS/EIR. Specific meeting dates, times, and places will be published in local newspapers and notices will be provided to those on the mailing list.

5. Availability of the DEIS/DEIR

The draft EIS/EIR is expected to be available to the public in February 1992.

Dated: June 28, 1991.

Charles S. Thomas,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 91-16802 Filed 7-11-91; 8:45 am]

BILLING CODE 3710-KF-M

Intent To Prepare a Draft Supplemental Environmental Impact Statement (DSEIS) for the Replacement of Locks and Dams 52 and 53 on the Ohio River, Kentucky-Illinois

AGENCY: U.S. Army Corps of Engineers, Louisville District.

ACTION: Notice of intent to prepare a DSEIS.

SUMMARY: A draft supplement to an earlier Final Environmental Impact Statement (FEIS) is being prepared due to design and construction schedule changes in the proposed project. These changes present impacts which were not addressed in the previous FEIS concering construction and operation of the replacement navigation structure.

SUPPLEMENTARY INFORMATION: The project considered in the FEIS in November 1985 has changed. Seasonal construction has been replaced with year-around construction. Dam design has changed and dredging requirements have significantly increased. These changes in combination with the initiation of nesting by bald eagles, an endangered species, in 1986 and subsequent successful reproduction led to teh decision to supplement the previous FEIS.

The principal emphasis of the DSEIS will be to address impacts of the proposed replacement structure on endangered species, migratory waterfowl, and the Commonwealth of Kentucky's Ballard County Wildlife Management area. The results of the Louisville District's Navigation Predictive Analysis Technique (NAVPAT) will also be presented. Measures to avoid or minimize potential or expected impacts will be included.

Coordination with interested state agencies of Illinois and Kentucky and other Federal agencies identified the resources and impacts to be addressed in the DSEIS. Any other comments regarding scoping should be addressed to the Louisville District.

FOR FURTHER INFORMATION CONTACT: Michael Turner, 502-582-6015/6475. Questions about the proposed action or comments regarding any significant issues which should be considered in the DSEIS should be directed to U.S. Army Engineer District, Louisville, ATTN: CEORL-PD-R (Michael Turner), P.O. Box 59, Louisville, Kentucky 40201-0059.

The Louisville District estimates that the DSEIS will be released for public review in September 1991.

Dated: June 21, 1991.

Michael B. Calnan,

LTC, U.S. Army, District Engineer.

[FR Doc. 91-16803 Filed 7-11-91; 8:45 am]

BILLING CODE 3710-JB-M

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 91-19-NG]

Inland Gas & Oil Corp.; Order Granting Authorization To Import and Export Natural Gas, Including Liquefied Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to import and export natural gas, including Liquefied Natural Gas (LNG), from and to Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Inland Gas & Oil Corp. authorization to import from Canada up to 14 Bcf of natural gas, including LNG, and to export to Canada up to 36 Bcf of natural gas and LNG over a two-year term beginning on the date of the first import or export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 5, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-16666 Filed 7-11-91; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Final Allocation and Intent To Execute Contract for Power Converted From Exchange Power to Sale Power From the Navajo Generating Station

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of final allocation and intent to execute contract for the powei

converted from Exchange Power to Sale Power available from the Navajo Generating Station, Central Arizona Project (CAP).

SUMMARY: Section VI(C) of the Navajo Power Marketing Plan (Plan) provides that the Western Area Power Administration (Western), in consultation with the Central Arizona Water Conservation District (CAWCD) and the Bureau of Reclamation (Reclamation), may determine that any Navajo Surplus not subscribed to by Arizona entities for long-term exchange may be offered for long-term sale in the order of priority stated in section VI(A) of the Plan or may be offered to non-Arizona entities for exchange.

By **Federal Register** notice 54 FR 31368 dated July 28, 1989, Western allocated to Arizona applicants 250 megawatts (MW) of the power available for long-term sale and 150 MW of the power available for long-term exchange (Navajo Surplus) from the Navajo Genreating Station (the Original Power Allocation). Subsequently, most of these entities, including all allottees of the 150 MW of Navajo Surplus available for long-term exchange, indicated that they did not wish to contract for the Navajo Surplus allocated by Western.

Western, after consultation with CAWCD and Reclamation, determined that it would convert that portion of the Original Power Allocation which consisted of Navajo Surplus available for long-term exchange (Exchange Power), but not contracted for by Arizona entities, to Navajo Surplus available for long-term sale (Sale Power).

On November 1, 1990, **Federal Register** notice 55 FR 46098 announced the conversion of Exchange Power to Sale Power, and Western requested applications for such Sale Power. That **Federal Register** notice stated that allottees of such Sale Power would be offered sale contracts with substantially the same terms and conditions as those offered to allottees under the Original Power Allocation. As a result of that **Federal Register** notice, Western received various applications for such Sale Power. A list of these applicants is provided later in this document under the allocation section. Competing applications were received from two priority 1 Arizona applicants (Arizona Power Authority (APA) and Salt River Project Agricultural Improvement and Power District (SRP)). Subsequently, APA withdrew its application. Therefore, the entire 150 MW of such Sale Power is being allocated to SRP as proivided for in Section VI of the Plan.

The Hoover Power Plant Act of 1984 (Act) provides for the adoption of the Plan for the purposes of optimizing the availability of Navajo Surplus and providing financial assistance in the timely construction and repayment of construction costs of authorized features of the CAP. The Act further provides that rates established for such purposes shall not exceed levels that allow for an appropriate saving for the contractor. The Plan describes rates that will not exceed such levels. The Plan fixes the capacity rate for long-term sales of Navajo Surplus at $72 per kilowatt (kW) per year, to be billed in a monthly amount of $6 per kW based on each contractor's capacity entitlement.

Pursuant to the Plan, the contract to be entered into with SRP provides for the sale to SRP of the 150 MW of Navajo Surplus Sale Power previously made available to Arizona entities for long-term exchange. The contract provides that the capacity rate for such Sale Power shall be billed monthly, beginning on the date of initial service, but that, at the election of the contractor, payments for such capacity may be made by the contractor commencing on a deferred initial payment date in accordance with an alternate payment schedule to be set forth in the contract. Under the contract, the present value of such alternate payments shall equal the present value of the payments at the capacity rate of $6 per kW per month for the period beginning on the date of initial service and ending September 30, 2011.

The contract provides that the energy rate shall be a mills per kilowatthour (kWh) rate calculated by dividing the total annual costs described in the contract by the total annual kWh projected to be available to the United States in the applicable calendar year. Under the contract, payment for energy shall be made monthly directly to Western, beginning on the date of initial service.

DATES: This Final Allocation and Intent to Execute Contract for Power Converted from Exchange Power to Sale Power from the Navajo Generating Station shall become effective on August 12, 1991.

ADDRESSES: Mr. Thomas A. Hine, Area Manager, Phoenix Area Office, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 352–2453.

SUPPLEMENTARY INFORMATION:

Contents

A. Background

Section 107 of the Hoover Power Plant Act of 1984 (98 Stat. 1333, 1339) required the Secretary of the Interior to adopt a plan deemed most acceptable for the purpose of optimizing the availability of Navajo Surplus and providing financial assistance in the timely construction and repayment of construction costs of authorized features of the CAP. The Commissioner of Reclamation adopted the Plan on December 1, 1987, and the Plan was published in the **Federal Register** on December 21, 1987 (52 FR 48328). The Plan provides that the Secretary of Energy will sell and exchange the Navajo Surplus in a manner consistent with the Plan. The Plan provides that 400 MW of capacity, less the capacity used for exchange purposes, would be available for sale on a long-term basis. The Plan provides that maximum of 150 MW of such 400 MW may be made available for exchanges on a long-term basis. The Plan provides that there will be 760 kWh of energy per year for each kW of such capacity.

Consistent with the Plan, Western requested applications for Navajo Surplus power from the Navajo Generating Station in the **Federal Register** on May 13, 1988 (53 FR 17102). The Original Power Allocation of Navajo Surplus, published in the **Federal Register** on July 28, 1989 (54 FR 31368), stated that 250 MW of capacity and associated energy available for long-term sale and 150 MW of capacity and associated energy available for long-term exchange was allocated to Arizona applicants. That **Federal Register** notice further provided that any such capacity and associated energy withdrawn or returned to Western could be reallocated without further public process and reoffered by Western in accordance with the order of priority specified in section VI(A) of the Plan. The notice also provided that Western, in consultation with CAWCD and Reclamation, could determine that any capacity and energy not contracted for by Arizona entities for long-term exchange could be offered for long-term sale in the order of priority stated in section VI(A) of the Plan or could be offered to non-Arizona entities for long-term exchange.

Following the Original Power Allocation, Western, CAWCD, and Reclamation began negotiations with the allottees for contracts that would provide financial assistance in the timely construction and repayment of construction costs of authorized features of the CAP, as provided for in the

Hoover Power Plant Act of 1984 (98 Stat. 1333) and the Plan. Subsequently, most Arizona allottees withdrew their request for an allocation in whole or in part. Western has contracted with SRP for 200 MW of the 250 MW of the Original Power Allocation available for long-term sale. All of the 150 MW allocated to Arizona entities for long-term exchange was declined. Also, of the 250 MW allocated for long-term sale under the Original Power Allocation, 50 MW remains to be contracted for by applicants to whom it has been offered. Western, CAWCD, and Reclamation are continuing to negotiate with the remaining allottees for uncontracted portions of the Navajo Surplus allocated for long-term sale under the Original Power Allocation.

In consultation with CAWCD and Reclamation, Western determined that it would be necessary to convert the Navajo Surplus not contracted for long-term exchange by Arizona applicants to Navajo Surplus available for long-term sale. A notice was published in the **Federal Register** on November 1, 1990 (55 FR 46098), announcing the conversion of Exchange Power to Sale Power, and requesting applications for such Sale Power. Such Sale Power is being offered to applicants in the order of priority specified in section VI(A) of the Plan.

B. Allocation

As a result of the November 1, 1990, **Federal Register** notice, Western has received applications for such Sale Power. The following table is a list of applicants in the order of priority, as specified in section VI(A) of the Plan.

After review of the applications, Western has allocated all of the 150 MW of such Sale Power to the priority 1 applicant, SRP. SRP met all the requirements for receiving such allocation.

LONG-TERM NAVAJO SURPLUS FEDERAL REGISTER NOTICE RESPONSES CONVERSION OF 150 MW OF EXCHANGE POWER TO SALE POWER

Responses received from	Amount requested (MW)
Priority 1:	
APA [1]	105
SRP	150
Priority 2:	
Azusa, City of	10
Banning, City of	5
Colton, City of	10
Riverside, City of	50

LONG-TERM NAVAJO SURPLUS FEDERAL REGISTER NOTICE RESPONSES CONVERSION OF 150 MW OF EXCHANGE POWER TO SALE POWER—Continued

Responses received from	Amount requested (MW)
Priority 3:	
None	
Priority 4:	
CUC	
Mohave Elec. Div.	12
Santa Cruz Div.	2
Veterans Administration [2]	
Phoenix	.039
Prescott	.037
Tucson	.030

[1] APA has since withdrawn its application.
[2] Determined to be priority 4 because the Veterans Administration does not have utility responsibility or an electrical distribution system.

C. Regulatory Procedural Requirements

Executive Order 12291

Under the provisions of section 3 of Executive Order 12291 dated February 17, 1981, a regulatory impact analysis must be made prior to the publication of a major rule. This proposal is of a technical nature and is not considered to be a major rule within the meaning of the Executive Order. Western has an exemption from sections 3, 4, and 7 of Executive Order 12291; accordingly, no clearance of this procedure by the Office of Management and Budget is required.

National Environmental Policy Act

In compliance with the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality Regulations, and the Department of Energy guidelines for compliance with NEPA, republished and amended in the **Federal Register** on December 15, 1987 (52 FR 47662), Western prepared an environmental assessment of the potential impacts of the marketing of long-term Navajo Surplus. The Department of Energy determined that Western's proposed actions would not lead to any significant environmental impacts and issued a finding of no significant impact on March 18, 1988. As the proposed action falls within the provisions of the Plan, and the total amount of power to be marketed under the Plan has not changed, no further NEPA documentation is required.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*), each agency, when required to publish a general notice of proposed rule, shall prepare for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, this proposal relates to particular electric services and rates provided by Western. Under 5 U.S.C. 601(2), such rules and practices relating to services are not considered rules within the meaning of this Act. Accordingly, no regulatory flexibility analysis is required.

Issued at Golden, Colorado, July 2, 1991.

William H. Clagett,

Administrator.

[FR Doc. 91-16667 Filed 7-11-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3973-4]

Committee on National Accreditation of Environmental Laboratories; Notice of Establishment and Open Meeting

As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), we are giving notice of the establishment of an Advisory Committee to consider options for establishing a national program for accrediting environmental laboratories and to make recommendations regarding the need and advisability of such a program. We have determined that this is in the public interest and will assist the Agency in performing its duties prescribed, in part, in the Water Quality Act. Copies of the Committee charter will be filed with appropriate committees of Congress and the Library of Congress.

The committee's initial meeting will be held on July 25-26, 1991, at the Ramada Renaissance, 13869 Park Center Road, Herndon, VA 22071. The meeting will start at 9 a.m. and will run until 5 p.m. on July 25, 1991; and will start at 9 a.m. and will run until 12 noon on July 26, 1991.

The purpose of the first meeting is to complete any outstanding procedural matters, to identify the substantive issues, to determine how best to address the substantive issues, and to begin to address them.

The public is invited to provide written comments. Please provide a minimum of 30 copies at your earliest convenience to Jeanne Hankins, WH-550G, 401 M St, SW.; Washington, DC 20460. If unable to provide copies in advance of the meeting, please have copies available at the time of the meeting. It is also recommended that at least 25 additional copies be available for distribution to the public at the time of the meeting. A brief period of time

will be available for oral comments. Anyone who would like to make an oral presentation is requested to contact Jeanne Hankins at (202) 475–8454 with the subject and an estimate of time needed for presentation.

If interested in attending, or, to be included on the mailing list for advance notice of future meetings, please contact Jeanne Hankins at (202) 475–8454.

Dated: July 5, 1991.

E. Ramona Trovato,

Executive Secretary, Environmental Monitoring Management Council.

[FR Doc. 91–16789 Filed 7–11–91; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3973–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 24, 1991 Through June 28, 1991 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 05, 1991 (56 FR 14096).

Draft EISs

ERP No. D–BLM–K61119–CA Rating EC2, Redding Resource Area, Land and Resource Management Plan, Implementation, Ukiah District, Butte, Shasta, Siskiyou, Tehama and Trinity Counties, CA.

Summary

EPA expressed environmental concerns because the project did not include a program to monitor water quality or soil conditions, or to ensure the protection of water and soil resources. EPA requested that the final EIS contain more information on these resources and how BLM will improve and protect special management areas such as wetlands and riparian areas.

ERP No. D–FHW–L40176–AK Rating LO, College Road Widening and Upgrading, Between Aurora Drive and Johanson Highway, Funding and Section 404 Permit, Fairbanks, AK.

Summary

EPA has no objections to the proposed action.

ERP No. D–MMS–A02233–00 Rating EO2, 1992 Central and Western Gulf of Mexico Outer Continental Shelf (OCS) Oil and Gas Sales 139 and 141, Lease Offering.

Summary

EPA objects to proposed unrestricted leasing without inclusion of protective environmental stipulations. EPA also recommends that an interim ozone modeling effort be undertaken in order to gauge impacts of offshore emissions on ozone levels onshore before publication of the final EIS.

ERP No. DA–NOA–L64015–AK Rating LO, Groundfish Fishery of the Bearing Sea and Aleutian Islands, Fishery Management Plant, Amendment 18/23 Inshore/Offshore Allocation Alternative Approval and Implementation, AK.

Summary

EPA had no objections to the proposed action.

Final EISs

ERP No. F–FHW–F40304–WI, US 18/151 Improvement, CTH–G to CTH–PD, City of Verona, Dane County, WI.

Summary

EPA expressed concern about noise abatement to the five moderately impacted residences since no mitigation measures other than noise barriers were considered.

ERP No. F–FRC–K03020–00, Pacific and Altamont Natural Gas Transmission Pipeline Projects, Construction, Operation and Maintenance, section 10 and 404 Permits, extending from Canada to CA.

Summary

EPA expressed continuing objections with the proposed action and noted that the final EIS was deficient in responding to most of EPA's concerns on the draft EIS, including impacts to wetlands, water quality, ground water, wildlife, fisheries and air quality. EPA noted that the final EIS did not demonstrate compliance with section 404 of the Clean Water Act.

ERP No. FS–COE–A36420–00, Tombigbee River and Tributaries Flood Control Project, Luxapalila Creek Segment, New and Additional Information, Lowndes County, MS and Lamar County, AL.

Summary

EPA feels the majority of the unavoidable impacts have been satisfactorily mitigated. The long-term environmental consequences of this proposal appear to have been lessened to the extent practicable.

ERP No. FS–COE–L82005–WA, Washington Aquatic Plan Management Program Geographic and Treatment Related Program, Implementation, New and Updated Information, Lewis and Pend Oreille Counties, WA.

Summary

Review of this document has been completed and the project found to be satisfactory.

Dated: July 9, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91–16671 Filed 7–11–91; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3973–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements Filed July 1, 1991 Through July 5, 1991 Pursuant to 40 CFR 1506.9.

EIS No. 910219, Draft EIS, BLM, MT, Judith-Valley-Phillips Comprehensive Resource Management Plan, Implementation, Lewistown District, Judith Basin, Fergus, Petroleum, Phillips and Valley Counties, MT, Due: October 2, 1991, Contact: Paul Petty (202) 653–9931.

EIS No. 910220, Second Final Supple, COE, GA, SC, Richard B. Russel Dam and Lake Pumped Storage Installation and Operations, Updated Information of Fish Protection Alternative, Savannah District, Elbert and Hart Counties, GA; Anderson and Abbeville Counties, SC, Due: August 12, 1991, Contact: David Coleman (912) 944–5792.

EIS No. 910221, Final EIS, EPA, MA, New Bedford Secondary Wastewater Treatment Plant, Construction and Operation, City of New Bedford, MA, Due: August 12, 1991, Contact: Anne Rodney (617) 565–4424.

EIS No. 910222, Final EIS, SFW, NY, Northern Montezuma Wetlands Project, Land Acquisition for Fish and Wildlife Protection and Management, Cayuga, Wayne and Seneca Counties, NY, Due: August 12, 1991, Contact: Carl Melberg (617) 965–5100.

EIS No. 910223, Final EIS, AFS, MT, Moose Creek Timber Sales and Road Construction Reconstruction, Implementation, Lewis and Clark National Forest, Kings Hill Ranger District, Meagher County, MT, Due: August 26, 1991, Contact: Victor C. Standa (406) 791–7700.

EIS No. 910224, Legislative Draft EIS, NOA, Regime to Govern the

Incidental Taking of Marine Mammals during Commercial Fishing Operations after October 1, 1993, Development and Management, Permit Approval, Due: September 23, 1991, Contact: Dr. Charles Karnella (301) 427–2322.

EIS No. 910225, Draft EIS, UAF, SD, Ellsworth Air Force Base Minuteman II of the 44th Strategic Missile Wing Deactivation, Implementation, Rapid City, Pennington County, SD, Due: August 26, 1991 Contact: Ms. Julia Cantrell (402) 294–3684.

Amended Notices

EIS No. 910085, Second Draft Supple, AFS, PR, Caribbean National Forest and Luquillo Experimental Forest Land Resource Management Plan, Effects of Hurricane Hope and Updated Information, Commonwealth of Puerto Rico, Due: July 31, 1991, Contact: Jose Salinas, Jr. (809) 766–5335. Published FR 03–29–91—Review period extended.

EIS No. 910172, Draft EIS, AFS, AK, Kensington Venture Underground Gold Mine Project, Development, Construction and Operation, Operating Plan Approval, NPDES, Section 10 and 404 Permits, Tongass National Forest, Sherman Creek, City of Juneau, AK, Due: September 3, 1991, Contact: Roger Birk (907) 586–8800. Published FR 05–81–91—Review period extended.

Dated: July 9, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91–16670 Filed 7–11–91; 8:45 am]

BILLING CODE 6560–50–M

[OPP–60019; FRL–3934–9]

Intent to Suspend Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of issuance of notices of intent to suspend.

SUMMARY: This Notice, pursuant to section 6 (f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., announces that EPA has issued Notices of Intent to Suspend pursuant to section 3(c)(2)(B) of FIFRA. The Notices were issued following issuance of Data Call-In Notices by the Agency and the failure of registrants subject to the Data Call-In Notices to take appropriate steps to secure the data required to be submitted to the Agency. This Notice includes the text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information. Table A of this Notice further identifies the registrants to whom the Notices of Intent to Suspend were issued, the date each Notice of Intent to Suspend was issued, the active ingredient(s) involved, and the EPA registration numbers and names of the registered product(s) which are affected by the Notices of Intent to Suspend. Moreover, Table B of this Notice identifies the basis upon which the Notices of Intent to Suspend were issued. Finally, matters pertaining to the timing of requests for hearing are specified in the Notices of Intent to Suspend and are governed by the deadlines specified in section 3(c)(2)(B). As required by section 6(f)(2), the Notices of Intent to Suspend were sent by certified mail, return receipt requested, to each affected registrant at its address of record.

FOR FURTHER INFORMATION CONTACT: Stephen L. Brozena, Office of Compliance Monitoring (EN–342), Laboratory Data Integrity Assurance Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703) 308–8267.

SUPPLEMENTARY INFORMATION:

I. Text of a Notice of Intent to Suspend

The text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information, follows:

United States Environmental Protection Agency

Office of Pesticides and Toxic Substances

Washington, DC 20460

Certified Mail

Return Receipt Requested

SUBJECT: Suspension of Registration of Pesticide Product(s) Containing _____ for Failure to Comply with the 3(c)(2)(B) Data Call-In Notice for _____ Dated _____.

Dear Sir/Madam:

This letter gives you notice that the pesticide product registrations listed in Attachment I will be suspended 30 days from your receipt of this letter unless you take steps within that time to prevent this Notice from automatically becoming a final and effective order of suspension. The Agency's authority for suspending the registrations of your products is section 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Upon becoming a final and effective order of suspension, any violation of the order will be an unlawful act under section 12(a)(2)(J) of FIFRA.

You are receiving this Notice of Intent to Suspend because you have failed to comply with the terms of the 3(c)(2)(B) Data Call-In Notice. The specific basis for issuance of this Notice is stated in the Explanatory Appendix (Attachment III) to this Notice. Affected products and the requirements which you failed to satisfy are listed and described in the following three attachments:

Attachment I Suspension Report - Product List

Attachment II Suspension Report - Requirement List

Attachment III Suspension Report - Explanatory Appendix

The suspension of the registration of each product listed in Attachment I will become final unless at least one of the following actions is completed.

1. You may avoid suspension under this Notice if you or another person adversely affected by this Notice properly request a hearing within 30 days of your receipt of this Notice. If you request a hearing, it will be conducted in accordance with the requirements of section 6(d) of FIFRA and the Agency's procedural regulations in 40 CFR part 164.

Section 3(c)(2)(B), however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this Notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or legal argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding.

Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75–day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your products.

A request for a hearing pursuant to this Notice must (1) include specific objections which pertain to the allowable issues which may be heard at the hearing, (2) identify the registrations for which a hearing is requested, and (3) set forth all necessary supporting facts

pertaining to any of the objections which you have identified in your request for a hearing. If a hearing is requested by any person other than the registrant, that person must also state specifically why he asserts that he would be adversely affected by the suspension action described in this Notice. Three copies of the request must be submitted to: Hearing Clerk, A–110, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and an additional copy should be sent to the signatory listed below. The request must be *received* by the Hearing Clerk by the 30th day from your receipt of this Notice in order to be legally effective. The 30–day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30–day time limit will result in automatic suspension of your registration(s) by operation of law and, under such circumstances, the suspension of the registration for your affected product(s) will be final and effective at the close of business 30 days after your receipt of this Notice and will not be subject to further administrative review.

The Agency's Rules of Practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: The Office of the Administrative Law Judges, the Office of the Judicial Officer, the Administrator, the Deputy Administrator, and the members of the staff in the immediate offices of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff shall have any *ex parte* communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within 30 days of your receipt of this Notice, the Agency determines that you have taken appropriate steps to comply with the section 3(c)(2)(B) Data Call-In Notice. In order to avoid suspension under this option, you must satisfactorily comply with Attachment II, Requirement List, for each product by submitting all required supporting data/information described in Attachment II and in the Explanatory Appendix (Attachment III) to the following address (preferably by certified mail):

Office of Compliance Monitoring (EN-342), Laboratory Data Integrity Assurance Division, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

For you to avoid automatic suspension under this Notice, the Agency must also determine within the applicable 30–day period that you have satisfied the requirements that are the bases of this Notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your product(s).

The suspension of the registration(s) of your company's product(s) pursuant to this Notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this Notice. Such compliance may only be achieved by submission of the data/information described in the attachments to the signatory below.

Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this Notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this Notice, including all supplemental registrants of product(s) listed in Attachment I, may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Persons other than the registrant subject to this Notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Nothing in this Notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I in any manner which would have been unlawful prior to the suspension.

If the registrations of your products listed in Attachment I are currently suspended as a result of failure to comply with another section 3(c)(2)(B) Data Call-In Notice, this Notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e., all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

You are reminded that it is your responsibility as the basic registrant to notify all supplementary registered distributors of your basic registered product that this suspension action also applies to their supplementary registered products and that you may be held liable for violations committed by your distributors.

If you have any questions about the requirements and procedures set forth in this suspension notice or in the subject 3(c)(2)(B) Data Call-In Notice, please contact Stephen L. Brozena at (703) 308–8267.

Sincerely yours,

Director, Office of Compliance Monitoring

Attachments:

Attachment I - Product List

Attachment II - Requirement List

Attachment III - Explanatory Appendix

II. Registrants Receiving and Affected by Notices of Intent to Suspend; Date of Issuance; Active Ingredient and Products Affected

The following is a list of products for which a letter of notification has been sent:

TABLE A—LIST OF PRODUCTS

Registrant Affected	EPA Registration Number	Active Ingredient	Name of Product	Date Issued
Amvac Chemical Corporation	5481–56	Ammonium Sulfamate	Alco Stump Killer	6/19/91
Applied Methods Enterprises	49592–1	Dichlone	Spariffic	6/13/91
Ford's Chemical and Service Inc.	10370–146	Ammonium Sulfamate	Liquid Edger Ready to Use	6/19/91
Hi-Yield Chemical Company	34911–1	Ammonium Sulfamate	Hi-Yield Liquid Edger	6/19/91

TABLE A—LIST OF PRODUCTS—Continued

Registrant Affected	EPA Registration Number	Active Ingredient	Name of Product	Date Issued
Performance Engineering Products	10807-149	Diuron	Bear-Ox 22	6/25/91
Platte Chemical Company	34704-638	Sulfuryl Fluoride	Sulfuryl Fluoride Fumigant	4/2/91
Rhone-Poulenc Ag Company	12020-1	Diuron	Diuron Technical	6/25/91
	12020-2	Diuron	Diuron-80	6/25/91
Sungro Chemicals, Inc.	11474-70	Ammonium Sulfamate	Sys-sect	6/19/91
Sunniland Corporation	9404-57	Ammonium Sulfamate	Liquid-trim Grass and Lawn Edger	6/19/91
Voluntary Purchasing Group, Inc.	7401-128	Ammonium Sulfamate	Ferti-lome Liquid Poision Ivy Killer	6/19/91
	7401-335	Ammonium Sulfamate	Ferti-lome Brush Killer Stump Killer	

III. Basis for Issuance of Notice of Intent; Requirement List

The following companies failed to submit the following required data or information:

TABLE B—LIST OF REQUIREMENTS

Active Ingredient	Registrant Affected	Requirement Name	Original Due-Date
Ammonium Sulfamate	Amvac Chemical Corporation	30-Day Response	8/23/90
	Ford's Chemical and Service	30-Day Response	8/23/90
	Hi-Yield Chemical Company	30-Day Response	8/23/90
	Sungro Chemicals, Inc.	30-Day Response	8/23/90
	Sunniland Corporation	30-Day Response	8/23/90
	Voluntary Purchasing Group, Inc.	30-Day response	8/23/90
Dichlone	Applied Methods Enterprises	90-Day Response	1/8/91
Diuron	Performance Engineering Products	90-Day Response	1/3/91
	Rhone-Poulenc Ag Company	90-Day Response	1/3/91
Sulfuryl Fluoride	Platte Chemical Company	90-Day Response	10/31/90

IV. Attachment III Suspension Report--Explanatory Appendix

A discussion of the basis for the Notice of Intent to Suspend follows:

A. Sulfuryl Fluoride

In July 1989, EPA issued a Data Call-In Notice (DCI) under authority of FIFRA section 3(c)(2)(B) which required registrants of products containing sulfuryl fluoride to develop and submit data. These data were determined to be necessary to maintain the continued registration of affected products. Failure to comply with the requirements of a Data Call-In Notice is a basis for suspension under section 3(c)(2)(B) of FIFRA.

The Sulfuryl Fluoride Data Call-In required each affected registrant to submit materials demonstrating selection by the registrant of the options to address the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the DCI. Because the Agency has not received a response from you as a sulfuryl fluoride registrant to undertake the required testing or any other appropriate response, the Agency is initiating through this Notice of Intent to Suspend the actions which FIFRA requires it to take under these circumstances.

B. Ammonium Sulfamate

In April 1981, EPA issued a Registration Standard which included a Data Call-In Notice pursuant to the authority of FIFRA section 3(c)(2)(B) which required registrants of products containing ammonium sulfamate (AMS) used as an active ingredient to develop and submit data. These data were determined to be necessary to maintain the continued registration of affected products. Failure to comply with the data requirements of a Registration Standard is a basis for suspension under section 3(c)(2)(B) of FIFRA.

The Ammonium Sulfamate Registration Standard required each affected registrant to submit materials demonstrating selection by the registrant of the options to address the data requirements. You applied for and were granted a generic data exemption and therefore, you relied on the efforts of others to provide the Agency with the required data. The basic manufacturer of ammonium sulfamate for use in pesticide products is no longer producing ammonium sulfamate products nor is it supporting its registration. As a result, the responsibility for generating the necessary data to maintain the registration lies with the remaining registrants. In a letter dated July 18, 1990, the Agency informed you and other registrants of ammonium sulfamate products of the above status and required that you inform the Agency within 30 days of your receipt of the letter of the steps you were electing to take regarding the data requirements necessary to support your registration. To date the Agency has received no response from you. Because the Agency has not received a response from you as an ammonium sulfamate registrant to undertake the required testing or any other appropriate response (i.e. voluntary cancellation), the Agency is initiating through this Notice of Intent to Suspend the actions which FIFRA requires it to take under these circumstances.

C. Dichlone

On October 5, 1990, EPA issued a Data Call-In Notice (DCI) under authority of FIFRA Section 3(c)(2)(B) which required registrants of products containing Dichlone used as an active ingredient to develop and submit data. These data were determined to be necessary to maintain the continued registration of affected products. Failure to comply with the requirements of a Data Call-In Notice is a basis for suspension under section 3(c)(2)(B) of FIFRA.

The Dichlone Data Call-In required each affected registrant to submit materials demonstrating selection by the registrant of the options to address the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the DCI. Because the Agency has not received a response from you as a Dichlone registrant to undertake the required testing or any other appropriate response, the Agency is initiating through this Notice of Intent to Suspend the actions which FIFRA requires it to take under these circumstances.

D. Diuron

On September 28, 1990, EPA issued a Data Call-In Notice (DCI) under authority of FIFRA section 3(c)(2)(B) which required registrants of products containing diuron used as an active ingredient to develop and submit data. These data were determined to be necessary to maintain the continued registration of affected products. Failure to comply with the requirements of a Data Call-In Notice is a basis for suspension under section 3(c)(2)(B) of FIFRA.

The Diuron Data Call-In required each affected registrant to submit materials demonstrating selection by the registrant of the options to address the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the DCI. To date you have failed to provide that required submission to the Agency. Because the Agency has not received a response from you as a diuron registrant to undertake the required testing or any other appropriate response, the Agency is initiating through this Notice of Intent to Suspend the actions which FIFRA requires it to take under these circumstances.

V. Conclusions

EPA has issued Notices of Intent to Suspend on the dates indicated. Any further information regarding these Notices may be obtained from the contact person noted above.

Dated: July 8, 1991.

Michael M. Stahl,

Director, Office of Compliance Monitoring.

[FR Doc. 91-16653 Filed 7-11-91; 8:45 am]

BILLING CODE 6560-50-F

[OPP-60020; FRL-3935-1]

Intent to Suspend Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of issuance of notices of intent to suspend.

SUMMARY: This Notice, pursuant to section 6(f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., announces that EPA has issued Notices of Intent to Suspend pursuant to sections 3(c)(2)(B) and 4 of FIFRA. The Notices were issued following issuance of Section 4 Reregistration Requirements Notices by the Agency and the failure of registrants subject to the Section 4 Reregistration Requirements Notices to take appropriate steps to secure the data required to be submitted to the Agency. This Notice includes the text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information. Table A of this Notice further identifies the registrants to whom the Notices of Intent to Suspend were issued, the date each Notice of Intent to Suspend was issued, the active ingredient(s) involved, and the EPA registration numbers and names of the registered product(s) which are affected by the Notices of Intent to Suspend. Moreover, Table B of this Notice identifies the basis upon which the Notices of Intent to Suspend were issued. Finally, matters pertaining to the timing of requests for hearing are specified in the Notices of Intent to Suspend and are governed by the deadlines specified in section 3(c)(2)(B). As required by section 6(f)(2), the Notices of Intent to Suspend were sent by certified mail, return receipt requested, to each affected registrant at its address of record.

FOR FURTHER INFORMATION CONTACT: Stephen L. Brozena, Office of Compliance Monitoring (EN-342), Laboratory Data Integrity Assurance Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703) 308-8267.

SUPPLEMENTARY INFORMATION:

I. Text of a Notice of Intent to Suspend

The text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information, follows:

United States Environmental Protection Agency

Office of Pesticides and Toxic Substances

Washington, DC 20460

Certified Mail

Return Receipt Requested

SUBJECT: Suspension of Registration of Pesticide Product(s) Containing _____ for Failure to Comply with the Section 4 Reregistration Requirements Notice for _____ Dated _____

Dear Sir/Madam:

This letter gives you notice that the pesticide product registrations listed in Attachment I will be suspended 30 days from your receipt of this letter unless you take steps within that time to prevent this Notice from automatically becoming a final and effective order of suspension. The Agency's authority for suspending the registrations of your products is sections 3(c)(2)(B) and 4(d)(6) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Upon becoming a final and effective order of suspension, any violation of the order will be an unlawful act under section 12(a)(2)(J) of FIFRA.

You are receiving this Notice of Intent to Suspend because you have failed to comply with the terms of the Phase 2 Data Requirements for Reregistration Notice imposed pursuant to Section 4 of FIFRA. Section 4(d)(6) provides that the Administrator "shall issue a Notice of Intent to Suspend the registration of a pesticide in accordance with the procedures prescribed by section 3(c)(2)(B)(iv) if the Administrator determines that (A) progress is insufficient to ensure submission of the data required for such pesticide under a commitment made under paragraph (3)(B) within the time period prescribed by paragraph (4)(B) or (B) the registrant has not submitted such data to the Administrator within such time period."

The specific basis for issuance of this Notice is stated in the Explanatory Appendix (Attachment III) to this Notice. Affected products and the requirements which you failed to satisfy are listed and described in the following three attachments:

Attachment I Suspension Report - Product List

Attachment II Suspension Report - Requirement List

Attachment III Suspension Report - Explanatory Appendix

The suspension of the registration of each product listed in Attachment I will become final unless at least one of the following actions is completed.

1. You may avoid suspension under this Notice if you or another person adversely affected by this Notice properly request a hearing within 30 days of your receipt of this Notice. If you request a hearing, it will be conducted in accordance with the requirements of section 6(d) of FIFRA and the Agency's procedural regulations in 40 CFR part 164.

Section 3(c)(2)(B), however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this Notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or legal argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding.

Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75–day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your products.

A request for a hearing pursuant to this Notice must (1) include specific objections which pertain to the allowable issues which may be heard at the hearing, (2) identify the registrations for which a hearing is requested, and (3) set forth all necessary supporting facts pertaining to any of the objections which you have identified in your request for a hearing. If a hearing is requested by any person other than the registrant, that person must also state specifically why he asserts that he would be adversely affected by the suspension action described in this Notice. Three copies of the request must be submitted to: Hearing Clerk, A–110, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and an additional copy should be sent to the signatory listed below. The request must be *received* by the Hearing Clerk by the 30th day from your receipt of this Notice in order to be legally effective. The 30–day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30–day time limit will result in automatic suspension of your registration(s) by operation of law and, under such circumstances, the suspension of the registration for your affected product(s) will be final and effective at the close of business 30 days after your receipt of this Notice and will not be subject to further administrative review.

The Agency's Rules of Practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: The Office of the Administrative Law Judges, the Office of the Judicial Officer, the Administrator, the Deputy Administrator, and the members of the staff in the immediate offices of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff shall have any *ex parte* communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within 30 days of your receipt of this Notice, the Agency determines that you have taken appropriate steps to comply with the section 4 Data Requirements for Reregistration. In order to avoid suspension under this option, you must satisfactorily comply with Attachment II, Requirement List, for each product by submitting all required supporting data/information described in Attachment II and in the Explanatory Appendix (Attachment III) to the following address (preferably by certified mail):

Office of Compliance Monitoring (EN–342), Laboratory Data Integrity Assurance Division, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

For you to avoid automatic suspension under this Notice, the Agency must also determine within the applicable 30–day period that you have satisfied the requirements that are the bases of this Notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your product(s).

The suspension of the registration(s) of your company's product(s) pursuant to this Notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this Notice. Such compliance may only be achieved by submission of the data/information described in the attachments to the signatory below.

Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this Notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this Notice, including all supplemental registrants of product(s) listed in Attachment I, may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Persons other than the registrant subject to this Notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Nothing in this Notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I in any manner which would have been unlawful prior to the suspension.

If the registrations of your products listed in Attachment I are currently suspended as a result of failure to comply with another section 4 Data Requirements Notice or section 3(c)(2)(B) Data Call-In Notice, this Notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e., all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

You are reminded that it is your responsibility as the basic registrant to notify all supplementary registered distributors of your basic registered product that this suspension action also applies to their supplementary registered products and that you may be held liable for violations committed by your distributors. If you have any

questions about the requirements and procedures set forth in this suspension notice or in the subject section 4 Data Requirements Notice, please contact Stephen L. Brozena at (703) 308–8267.

Sincerely yours,

Director, Office of Compliance Monitoring

Attachments:

Attachment I - Product List

Attachment II - Requirement List

Attachment III - Explanatory Appendix

II. Registrants Receiving and Affected by Notices of Intent to Suspend; Date of Issuance; Active Ingredient and Products Affected

The following is a list of products for which a letter of notification has been sent:

TABLE A—LIST OF PRODUCTS

Registrant Affected	EPA Registration Number	Active Ingredient	Name of Product	Date Issued
Grace Sierra Crop Protection Company	58185-12	Dodemorph	Milban	6/3/91
McLaughlin Gormley King Company	1021-670	Hydroxyethyl Octyl Sulfide	MGK Formula 6118	6/13/91
	1021-676		MGK Repellent 874	
	1021-848		Pyrocide Intermediate 6154	
	1021-851		Pyrocide Intermediate 6200	
	1021-912		Pyrocide Intermediate 6772	
	1021-1026		D-Trans Intermediate 1808	
	1021-1046		D-Trans Intermediate 1818	
	1021-1152		D-Trans Intermediate 1872	
	1021-1153		D-Trans Intermediate 1871	
	1021-1241		Esbiol Intermediate 1968	
	1021-1495		Multicide Intermediate 2096	
	1021-1541		Pyrocide Intermediate 7361	

III. Basis for Issuance of Notice of Intent; Requirement List

The following companies failed to submit the following required data or information:

TABLE B—LIST OF REQUIREMENTS

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference Number	Original Due-Date
Dodemorph	Grace Sierra Crop Protection Company	Chemical identity	61-1	8/24/90
		Begin. mat. and manufacturing process	61-2(a)	8/24/90
		Discussion of impurities	61-2(b)	8/24/90
		Preliminary analysis	62-1	8/24/90
		Certification of limits	62-2	8/24/90
		Analytical method	62-3	8/24/90
		Color	63-2	8/24/90
		Physical state	63-3	8/24/90
		Odor	63-4	8/24/90
		Melting point	63-5	8/24/90
		Density	63-7	8/24/90
		pH	63-12	8/24/90
		Stability	63-13	8/24/90
		Primary dermal irritation	81-5	8/24/90
		Dermal sensitization	81-6	8/24/90
		Chemical identity	160-5	8/24/90
		Photodegradation-water	161-2	8/24/90
		Photodegradation-soil	161-3	8/24/90
		Chemical identity	171-2	8/24/90
		Directions for Use	171-3	8/24/90
Hydroxyethyl Octyl Sulfide	McLaughlin Gormely King Co.	Product chemistry	61-1 thru 63-13	8/24/90
		Acute avian oral quail/duck	71-1(a)	8/24/90
		Acute avian dietary quail	71-2(a)	8/24/90
		Acute avian dietary duck	71-2(b)	8/24/90
		Fish toxicity bluegill	72-1(a)	8/24/90
		Fish toxicity rainbow trout	72-1(c)	8/24/90
		Invertebrate toxicity	72-2(a)	8/24/90
		Honey bee acute contact	141-1	8/24/90
		Chemical identity	160-5	8/24/90

IV. Attachment III Suspension Report—Explanatory Appendix

A discussion of the basis for the Notice of Intent to Suspend follows:

A. Dodemorph

On May 24, 1989, EPA issued the Phase 2 Data Requirements for Reregistration Notice imposed pursuant to section 4 of FIFRA which required registrants of products containing dodemorph and salts to develop and submit certain data. These data were determined to be necessary to satisfy reregistration data requirements of section 4(d). Failure to comply with the requirements of a Phase 2 Data Requirements Notice is a basis for suspension under sections 3(c)(2)(B) and 4(d)(6) of FIFRA.

The Dodemorph Reregistration Data Requirements Notice dated May 24, 1989 required each affected registrant to submit materials relating to the election of the options to address each of the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the Notice. The Agency received on August 24, 1989, a response from you dated August 21, 1989 in which you as dodemorph registrant committed to undertake the required testing. The Notice further required that data be submitted by deadlines noted for the subject data requirements on Attachment II. These deadlines have passed and to date the Agency has not received adequate data to satisfy these data requirements. Because you have failed to provide an appropriate or adequate response within the time provided for data requirements listed on Attachment II, the Agency is initiating through this Notice of Intent to Suspend the actions which FIFRA requires it to take under these circumstances.

B. Hydroxyethyl Octyl Sulfide

On July 24, 1989, EPA issued the Phase 2 Data Requirements for Reregistration Notice imposed pursuant to section 4 of FIFRA which required registrants of products containing hydroxyethyl octyl sulfide to develop and submit certain data. These data were determined to be necessary to satisfy reregistration data requirements of section 4(d). Failure to comply with the requirements of a Phase 2 Data Requirements Notice is a basis for suspension under sections 3(c)(2)(B) and 4(d)(6) of FIFRA.

The Hydroxyethyl Octyl Sulfide Reregistration Data Requirements Notice dated July 24, 1989 required each affected registrant to submit materials relating to the election of the options to address each of the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the Notice. The Agency received on October 26, 1989, a response from you dated October 20, 1989 in which you as a hydroxyethyl octyl sulfide registrant committed to undertake the required testing to meet the data requirements listed in Attachment II. The Notice further required that these data be submitted by deadlines noted for the subject data requirements on Attachment II. These deadlines have passed and to date the Agency has not received data to satisfy these data requirements. Because you have failed to provide appropriate or adequate data submissions within the time provided for the data requirements listed on Attachment II, the Agency is initiating through this Notice of Intent to Suspend the actions which FIFRA requires it to take under these circumstances.

V. Conclusions

EPA has issued Notices of Intent to Suspend on the dates indicated. Any further information regarding these Notices may be obtained from the contact person noted above.

Dated: July 8, 1991.

Michael M. Stahl,

Director, Office of Compliance Monitoring.

[FR Doc. 91-16654 Filed 7-11-91; 8:45 am]

BILLING CODE 6560-50-F

[FRL 3973-5]

Proposed Administrative Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act; Hooper Sands, South Berwick, ME

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and request for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to enter an administrative settlement to address claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601. Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. The settlement is intended to resolve the liability under CERCLA of the United States Department of the Navy for costs incurred by EPA in conducting response actions at the Hooper Sands Superfund Site in South Berwick, Maine as of September 18, 1990.

DATES: Comments must be provided on or before August 12, 1991.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building—RCG, Boston, Massachusetts 02203, and should refer to: In the Matter of Hooper Sands Superfund Site, South Berwick, ME, U.S. EPA Docket No. I-91-1001.

FOR FURTHER INFORMATION CONTACT: Andrea Simpson, U.S. Environmental Protection Agency, Office of Regional Counsel, RCE, JFK Federal Building, Boston, Massachusetts 02203, (617) 565-9401.

SUPPLEMENTARY INFORMATION: In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(i)(1), notice is hereby given of a proposed administrative settlement concerning the Hooper Sands Superfund Site in South Berwick, ME. The settlement was approved by EPA Region I on June 28, 1991, subject to review by the public pursuant to this Notice. The United States Department of the Navy, the Settling Party, has executed a signature page committing it to participate in the settlement. Under the proposed settlement, the Settling Party is required to pay $1,091,177.36 to the Hazardous Substances Superfund. EPA believes the settlement is fair and in the public interest.

EPA is a entering into this agreement under the authority of section 122(h) of CERCLA. Section 122(h) of CERCLA provides EPA with authority to consider, compromise, and settle a claim under section 107 of CERCLA for costs incurred by the United States if the claim has not been referred to the U.S. Department of Justice for further action. The U.S. Department of Justice approved this settlement in writing on May 8, 1991.

EPA will receive written comments relating to this settlement for thirty (30) days from the date of publication of this Notice.

A copy of the proposed administrative settlement may be obtained in person or by mail from Andrea Simpson, U.S. Environmental Protection Agency, Office of Regional Counsel, JFK Federal Building—RCE, Boston, Massachusetts 02203, (617) 565-9401.

The Agency's response to any comments received will be available for public inspection with the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building—RCG,

Boston, Massachusetts (U.S. EPA Docket No. I–91–1001).

Dated: June 28, 1991.

Paul G. Keough,

Acting Regional Administrator.

[FR Doc. 91–16662 Filed 7–11–91; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

July 5, 1991.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452–1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0099.

Title: Annual Report Form M.

Form Number: FCC Form M.

Action: Revision.

Respondents: Businesses or other for-profit.

Frequency of Response: Annually.

Estimated Annual Burden: 52 responses; 1,700 hours average burden per response; 88,400 hours total annual burden.

Needs and Uses: FCC Form M is the Annual Report of financial and operating information from all subject telephone companies having annual operating revenues in excess of $100,000,000. The data is used by FCC staff in the regulation of the telecommunications industry and by the public in analyzing the industry.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–16614 Filed 7–11–91; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Virginia International Terminals, Inc., et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200543.

Title: Virginia International Terminals, Inc./Venezuelan Line Terminal Agreement.

Parties: Virginia International Terminals, Inc. (VIT) Venezuelan Line (VL).

Synopsis: The Agreement, filed July 2, 1991, provides for: VL's non-exclusive use of VIT's Newport News Marine Terminal facilities; VL's guarantee to move a minimum of 45,000 tons of cargo through the terminal by the end of this three year agreement; VIT to furnish VL with terminal services; and, VL to receive incentives, including a 15% discount off of certain Terminal Tariff No. 3 rates each and every year of the three year agreement.

Dated: July 8, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–16567 Filed 7–11–91; 8:45 am]

BILLING CODE 6730–01–M

Port of New Orleans, et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC. Office of the Federal Maritime Commission, 1100 L Street NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200060–018.

Title: Port of New Orleans/Coastal Cargo Company Marine Terminal Agreement.

Parties: Board of Commissioners of the Port of New Orleans (Port), Coastal Cargo Company (Coastal).

Synopsis: The Agreement provides for the cancellation of twenty sections of the premises currently leased by Coastal and a reduction in rent accordingly.

Dated: July 9, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–16600 Filed 7–11–91; 8:45 am]

BILLING CODE 6730–01–M

Florida Stevedoring, Inc. et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10220. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.602 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–002592–002.

Title: Port Everglades Freight Handlers Terminal Agreement.

Parties: Florida Stevedoring, Inc., Harrington & Company, Inc., S.E.L. Maduro (Florida), Inc., Strachan Shipping Company.

Filing Party: Mr. Samuel G. Scott, Secretary, Port Everglades Freight Handlers, P.O. Box 011693, Miami, FL 33101.

Synopsis: The Agreement, filed July 2, 1991, restates the parties' basic agreement and updates the agreement's membership.

Agreement No.: 224–002629–001.

Title: Port of Miami Freight Handlers Terminal Agreement.

Parties: Biscayne Stevedore Agency, Continental Stevedoring & Terminals, Inc., Florida Stevedoring, Inc., S.E.L. Maduro (Florida), Inc., Universal Maritime Service Corporation, Oceanic Stevedoring Company, Inc.

Filing Party: Mr. Samuel G. Scott, Secretary, Port of Miami Freight Handlers, P.O. Box 011693, Miami, FL 33101.

Synopsis: The Agreement, filed July 2, 1991, amends the parties' basic agreement to update the agreement's membership.

Dated: July 8, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–16568 Filed 7–11–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

The Chase Manhattan Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 30, 1991.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. The Chase Manhattan Corporation, New York, New York; to acquire, through its subsidiary, Chase Home Mortgage Corporation, certain mortgage servicing rights from Pacific Coast Savings, San Francisco, California, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 8, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-16590 Filed 7-11-91; 8:45 am]

BILLING CODE 6210-01-F

Parkway Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 30, 1991.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Parkway Bancorp, Inc., Fort Myers, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Parkway Bank, Fort Myers, Florida.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Central Banking Group, Oklahoma City, Oklahoma; to acquire Lakeshore Bank, N.A., Oklahoma City, Oklahoma. As part of the proposed transaction, Central Bank of Oklahoma City, a state member bank, will merge with Lakeshore Bank, N.A. Lakeshore Bank will be liquidated and converted into a branch of Central.

2. First Medicine Lodge Bancshares, Inc., Medicine Lodge, Kansas, parent of First National Bank, Medicine Lodge, Kansas; to merge with C-M Company, Inc., Medicine Lodge, Kansas, parent of Isabel State Bank, Isabel, Kansas.

3. The Scott Stuart Family Partnership, Lincoln, Nebraska; to acquire an additional 5.6 percent (for a total of 31.6 percent) of the voting shares of The Stuart Family Partnership, Lincoln, Nebraska, parent of First Commerce Bancshares, Inc., Lincoln, Nebraska, and thereby indirectly acquire Overland National Bank of Grand Island, Grand Island, Nebraska; City National Bank of Hastings, Hastings, Nebraska; First National Bank of Kearney, Kearney, Nebraska; First Commerce Savings, Inc., Lincoln, Nebraska; National Bank of Commerce, Lincoln, Nebraska; North Platte National Bank, North Platte, Nebraska; First National Bank of West Point, West Point, Nebraska; and First National Bank of McCook, McCook, Nebraska.

4. Standard Bancorporation, Inc., Lincoln, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of Standard Bank and Trust, Independence, Missouri.

Board of Governors of the Federal Reserve System, July 8, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-16591 Filed 7-11-91; 8:45 am]

BILLING CODE 6210-01-F

Seaway Bancshares, Inc., et al.; Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 30, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Seaway Bancshares, Inc., Chicago Illinois; to engage *de novo* through its subsidiary Seaway Investment Management Company, Chicago, Illinois, in providing financial and investment advisory services to public and private pension plans and other institutional investors pursuant to § 225.25(b)(4)(iii) of the Board's Regulation Y and to provide discretionary investment management services.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Area Bancshares Corporation, Owensboro, Kentucky; to engage *de novo* through its subsidiary Area Services, Inc., Owensboro, Kentucky, in the purchasing and servicing of loans and mortgages on single to four-family residential properties, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 8, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-16592 Filed 7-11-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol Drug Abuse and Mental Health Administration

National Treatment Improvement Evaluation Study

AGENCY: Alcohol Drug Abuse and Mental Health Administration, Office for Treatment Improvement, HHS.

ACTION: Notice of Evaluation Methodology, National Treatment Improvement Evaluation Study.

SUMMARY: As required by Section 509G(b)(7) of the Public Health Service Act, notice is hereby given of the evaluation methodology for the National Treatment Improvement Evaluation Study (NTIES). The design has two components: An individual impact model developed by Research Triangle Institute (RTI) and a community impact model designed by Abt Associates. The implementation contract will be awarded by September 30, 1991. The methodology is presented in separate sections for each component. The purpose of the evaluation is to study the impact of six demonstration programs launched by the Office for Treatment Improvement: Cooperative Agreements for Drug Abuse Treatment Improvement in Target Cities (RFA OT–90–01), Model Comprehensive Treatment Programs for Critical Populations (RFA OT–90–02), Model Drug Abuse Treatment Programs for Non-Incarcerated Criminal Justice Populations (RFA OT–90–03), Model Drug Abuse Treatment for Correctional Settings (RFA OT 90–04). NTIES will also include two FY9l OTI demonstration programs: Model Comprehensive Drug Abuse Treatment Programs for Adolescents/Juvenile Justice (RFA TI–91–01), and Model Comprehensive Drug Abuse Treatment Programs for Critical Populations: Residents of Public Housing (RFA TI–91–02). Comments will be accepted during the next 60 days.

FOR FURTHER INFORMATION CONTACT: Shelley Benjamin (301) 443–5050, Office for Treatment Improvement, 5515 Security Lane 10th Floor, Rockville, Maryland 20857.

SECTION I—Individual Impact Evaluation Design

A. Purpose of the Evaluation

There are two underlying forces motivating the evaluation of the OTI demonstration programs: OTI's desire to learn from the experiences of these demonstration projects, and the Congressional mandate specifying that the impact of the demonstrations on individuals and communities be evaluated. The purpose of the evaluation of the impact on individuals of the six OTI demonstration programs is to answer two fundamental questions: (1) How did treatment change, and (2) how did patient behavior change?

The purpose of the evaluation is to study the impact on individuals of six demonstration programs launched by the Office for Treatment Improvement (OTI): Cooperative Agreements for Drug Abuse Treatment Improvement in Target Cities (RFA OT–90–01), Model Comprehensive Treatment Programs for Critical Populations (RFA OT–90–02), Model Drug Abuse Treatment Programs for Non-Incarcerated Criminal Justice Populations (RFA OT–90–03), and Model Drug Abuse Treatment Programs for Correctional Settings (RFA OT–90–04). Eight awards were made in the Target Cities demonstration, 80 in the Critical Populations demonstration, 10 in the Non-Incarcerated Criminal Justice demonstration, and 9 in the Correctional Settings demonstration. The National Treatment Improvement Evaluation Study (NTIES) will also cover two FY91 OTI demonstration programs: Model Comprehensive Drug Abuse Treatment Programs for Adolescents/Juvenile Justice (RFA TI–91–01) and Model Comprehensive Drug Abuse Treatment Programs for Critical Populations: Residents of Public Housing (RFA TI–91–02). These awards are expected to be made by September 30, 1991.

B. Overview of Common Design Features Across the Six Demonstrations.

The fundamental structure of the evaluation design follows from the fact that the six demonstrations are traditional service demonstrations. The key characteristic of service demonstrations with respect to evaluation is that they do not include a requirement for experimental design—that is, applicants are not required to establish multiple treatment groups (e.g., new treatment vs. standard treatment) to which patients are randomly assigned. Because this lack of random assignment limits the confidence with which changes observed in patients post-treatment can be attributed to the effects of the treatment itself, it has important implications for both the design and scope of the evaluation.

Although there are some fundamental differences among the six demonstrations, they share enough features that the basic evaluation can be accomplished using a common design. At a general level, the design features that are common to the evaluation of all six demonstrations can be summarized as follows. First, the activities of all projects participating in the six demonstrations will be documented, so that a detailed description can be made of:

- The nature of treatment before the demonstration-supported improvements were made;
- The activities that grantees engaged in to improve treatment (i.e., how did they go about improving treatment?); and
- The nature of treatment after the demonstration-supported improvements were made.

Second, patient "outcomes" will be studied both during and after treatment. For both in-treatment and post-treatment outcomes, the behavior of homogeneous groups of patients whose treatment included demonstration-supported enhancements will be compared with:

(1) The behavior of similar patients who were treated by the demonstration projects before treatment enhancements were implemented; and

(2) The behavior of similar patients who were treated with less comprehensive treatment.

Outcomes (both in- and post-treatment) for patients treated through the demonstrations will be assessed only in a subset of demonstration projects. The subset will include projects where the administrative outcomes data indicate that treatment has in fact been enhanced, and that serve one or more patient subgroups of interest. A "pretest" of the outcome study will be implemented early in a small subset of programs, and will serve as the source for preliminary outcome information.

Multiple dimensions of patient outcome will be studied (e.g., drug use, involvement in criminal activities). Assessment of these outcomes will be based on follow-up interviews with patients conducted by the national evaluation contractor at three months and, for a subset, one year after completion of treatment.

A hierarchical data collection system is planned, in which basic data are collected from all projects that receive demonstration funds, and more detailed data are collected from progressively smaller subsets of projects. At the first level, all projects will be asked to complete and send to the evaluation contractor periodic (e.g., quarterly) reports of their activities (e.g., number of patients admitted, number and type of staff hired, etc.). Essentially, this will involve a modest supplement to the data now provided through the National Drug and Alcoholism Treatment Unit Survey (NDATUS). Tabulations of these data will provide answers to the "what happened"questions. In addition, all projects will maintain an exit log to record the discharge date for all patients admitted during the demonstration period.

At the second level, at a subset of projects, the evaluation contractor will collect patient data using a standardized intake assessment for a sample of patients who enter treatment during the demonstration period, and an in-treatment assessment for those who remain in treatment for at least three months. For those projects not involved in this level of data collection, the evaluation contractor will extract patient intake information from the National Institute on Drug Abuse (NIDA) Client Data System (where it is available). This will provide less detailed information about the characteristics of the people entering treatment than that gathered by direct interview. Together, these two types of intake information will enable the evaluation contractor to describe "who is served" by the demonstrations, and the in-treatment data will provide the basis for describing the services provided and for identifying projects that have in fact implemented significant treatment enhancements.

At the third level, in a subset of projects, the evaluation contractor in addition to gathering baseline intake data and within treatment data will implement a follow-up data collection system. All patients treated at programs included in level three will be interviewed at three months post-treatment, and a subset of these patients will be interviewed again at twelve months post-treatment. These follow-up interviews will provide the basis for assessing post-treatment outcomes.

The evaluation will rely to the extent possible on existing instruments that have been used in prior or ongoing drug abuse treatment studies. The specific instruments that are proposed for the evaluation are: Activity Report (AR), Exit Log (EL), the NIDA Client Data System (CDS), the Individualized Assessment Profile (IAP) intake (IAP–I) and in-treatment (IAP–T) forms, the Patient Record Abstraction Form (PRAF), the Project Director Questionnaire (PDQ), and the National Drug and Alcoholism Treatment Unit Survey (NDATUS). The data collection plan is depicted schematically in Figure 1, and summarized in tabular form in Exhibit A at the end of section I. In the remainder of this section, we describe in greater detail the recommended designs for the "administrative outcomes" component and the "client outcomes" component of the evaluation that are common to the six demonstration programs. Then in the following section we provide additional design details specific to each of the four demonstrations.

1. Administrative Outcomes Component

The recommended design of the administrative outcomes component of the evaluation is straightforward, and is less constrained by the lack of random assignment than the patient outcomes component. By "administrative outcomes" we refer to the activities of the grantees—what is frequently referred to in the evaluation literature as "process," "formative," or "implementation"evaluation. Information from the administrative outcomes component of the evaluation will enable us to describe the projects, the services they provided, and the patients they served, and will also enable us to determine whether the projects actually implemented the intended treatment enhancements. Apart from describing "what happened," findings from the administrative outcomes evaluation can aid us in interpreting and understanding findings from the patient outcomes component, and can help explain why certain patient outcomes occurred or failed to occur.

A comprehensive assessment of administrative outcomes will require information that will enable us to

describe the projects' activities; the number and type of patients served and the services they received; and the structural and environmental contexts in which the projects operated over the life of the demonstration. These aspects of the administrative outcomes evaluation are described in the following sections.

a. *Documenting grantee activities.* In our hierarchical conception of the evaluation, we will collect some information from all projects in the four demonstration programs. More detailed data, however, will be collected in a smaller subset of projects where more extensive data are likely to be available, and that are concentrating on areas of greater evaluative interest. Data that describe the volume and type of grantee activities will be collected from all demonstration grantees. These data will be reported by grantees on an Activity Report (AR) that grantees will submit to the national evaluation contractor quarterly. To the extent possible, terms used will be compatible with NDATUS. Data from these ARs will be maintained in an active file, permitting status reports on the demonstrations (e.g., how many people have been served to date?) to be generated as needed.

The AR will include the following kinds of information:

- Number of people currently enrolled in treatment;
- Number of new admissions and readmissions;
- Number and type of patient intake assessments conducted;
- Number of discharges and reasons for discharge;
- Patient characteristics and primary substance(s) of abuse;
- Listing of new and continuing patient recruitment and referral sources;
- Numbers on waiting list;
- New service and administrative components added, either on site or through referral arrangements;
- Number and types of training and staff educational activities provided and numbers attending;
- Number and characteristics of new staff hired;
- Specification of standard and enhanced services provided and approximate number served in each (e.g., assessment, treatment plan development, individual counseling, family therapy, 12-step group, aftercare).

The evaluation contractor will establish a core set of activities that all projects will report about on the AR. Because some projects are pursuing unique objectives that may not be captured by the core data elements, however, it may be necessary to tailor the AR to provide for documentation of these important and unique project features.

b. *Documenting patient characteristics and services received.* In addition to documenting project activities, the evaluation will also develop a detailed description of the characteristics of the people served. Patient characteristic data will come from two sources:

(1) Analysis of data that projects report through NIDA's Client Data System (CDS), which is currently in partial operation and will be fully implemented by Summer, 1991; and

(2) More detailed data that will be collected by a subset of the demonstration grantees for the national evaluation.

CDS data will be obtained from NIDA by the national evaluation contractor for all providers participating in the demonstrations. CDS includes basic demographic characteristics and information about drug use. To supplement the CDS data, and provide a more detailed picture of the patients served by the demonstrations, a subset of projects will participate in a more-detailed intake data collection. In these projects, detailed patient-level intake data will be collected by the evaluation contractor through a structured interview format for each person who enters treatment. The intake form of the Individualized Assessment Profile (IAP–I), a standardized intake interview form modeled after the MTQAS intake form, will be used to collect this information. The IAP was selected because it is based on instruments developed and refined in prior treatment research, and because it is the only instrument currently available that fully addresses the concepts that are important to comprehensive treatment. The IAP will enable us to collect for each patient entering treatment descriptive information such as:

- Basic demographic characteristics: age, sex, ethnicity, education, marital status, dependents, etc.;
- Referral source;
- Motivation for treatment;
- Criminal justice background and probation/parole status;
- Living arrangements;
- Social support and social functioning;
- History and patterns of alcohol and drug use and treatment;
- History and involvement in illegal activities;
- Employment and income stability, job (or educational) skills and functioning;
- Health status and functioning; and
- Mental health status and functioning.

Two methods will be used to establish a more detailed description of the treatment and services that are provided by the projects. First, those projects that are participating in the IAP intake data collection will also complete intreatment assessments with the IAP–T. Second, a subset of these projects will also abstract information about treatment received from clinical records for those patients for whom an IAP–I was completed. The Patient Record Abstraction Form (PRAF), developed initially for TOPS and adapted for use in MTQAS, will be used to collect this information. Participating projects will complete these forms for all patients who remain in treatment at least three months. The kinds of information that the records abstraction procedure can capture includes:

- Admission, discharge, and referral information;
- Presenting complaint;
- Assessment and diagnosis;
- Treatment plan information;
- Number of counselors assigned to the patient;
- Drug use and drug use history;
- Treatment history;
- Services provided during treatment;
- Urinalysis results;
- Discharge and aftercare service information;
- Involvement in illegal activities; and
- Employment (or education) status.

IAPs and PRAFs will be collected by a subset of projects that: (1) Are sufficiently implemented for a more complete description of services to be meaningful; (2) have adequate service documentation in their established record keeping system; and (3) are pursuing objectives that may have special relevance and interest for the national evaluation. In addition to supplying a more detailed description of services and treatment provided, information from the records abstraction also can be used to verify patient descriptive information collected during the intake interview.

The national evaluation will also collect more detailed descriptions of patients and services on a still-smaller subset of projects. This more detailed information will be collected using intake and in-treatment instruments that are now being developed which are compatible with DATOS. These interviews will allow us to examine in more detail:

(1) Patient motivations, cognition, beliefs and expectations regarding substance use, treatment and recovery;

(2) the intensity, variety, mix and sequencing of services received by patients; and

(3) Patient cognitive and behavior change during treatment.

c. *Documenting projects' structure and environmental context.* For all demonstration projects, it will be important to collect descriptive information that can affect the projects'implementation and continuing operation. This information will be collected by the evaluation contractor semiannually, using a Project Director Questionnaire (PDQ) that is based on instruments used for similar purposes in TOPS, DATOS and MTQAS. The kinds of information that the PDQ will provide include:

- Director's and other staff background and training;
- Characteristics of program in which project is contained (e.g., modality/environment, patient capacity, average enrollment, waiting list, service capability, staffing levels, admissions and discharge policies, referral policies and practices, treatment philosophy and approaches, monitoring practices, urinalysis, methadone policies and practices);
- Budget, expenditures, and financing;
- Treatment plan policies and procedures;
- Staff and patient characteristics and staff-patient ratios;
- Data management, record keeping, and data processing and support;
- Confidentiality policies and requirements;
- Accreditation and review information;
- Federal, state, and local policies and regulations; and
- Availability and accessibility of community treatment and referral resources.

This information regarding project structure and external environment will be collected on a semiannual basis, and will enable OTI to determine whether structural and contextual changes have occurred that may impact in important ways on the projects' functioning and on the outcomes they are trying to achieve. To assure that this information is captured, OTI will include several open-ended questions on the PDQ that will allow directors to identify any changes that may have occurred in the project's structure or environment that significantly affected its operation. This information will be used as a screening device and followed-up with a more detailed telephone interview with those project directors who report important structural or environmental changes.

Together, the information supplied through the CDS, the AR, the IAP, the PRAF, the PDQ and the NDATUS will provide the basic information to address the evaluation's "what happened" questions: How many were served? What were their characteristics? What services did they receive? How much does comprehensive treatment cost? And what changes occurred in the projects, the treatment and services they provided and the patients they served?

2. Patient Outcomes Component

The design of the patient outcomes component of the evaluation is more strongly influenced by the demonstrations' lack of experimental design. Whereas the aim of the administrative outcomes component is simply to provide a description of what happened and how the demonstration projects changed, the aim of the patient outcomes component is to make causal inferences about the effect of the demonstrations' interventions on patient behavior—i.e., to examine whether, and under what conditions, "enhanced" treatment is better than, worse than, or no different from "standard" (non-enhanced) drug abuse treatment.

Thus, as noted above, the primary purpose of the patient outcomes component of the evaluation is to examine the question: What difference did it make? There are at least two alternative ways of interpreting this question, and each has important implications for the design and scope of the evaluation.

Recommended patient outcome design. The outcome component of the evaluation will focus on multiple dimensions of patient behavior in the post-treatment period. These will include:

- Retention in treatment;
- Drug and alcohol use;
- Involvement in criminal activities;
- Health status;
- Mental health status;
- Vocational (or educational) functioning; and
- Other social functioning.

Given the considerations discussed above, the recommended design of the patient outcomes component of the evaluation follows the "spirit of the law" interpretation. Patient outcome data will be collected by the national evaluation contractor, and only in a subset of demonstration projects. The subset will include projects:

(1) That implement enhanced treatment;

(2) Whose patients include adequate numbers of members of targeted critical populations; and/or

(3) That have implemented a particularly interesting treatment enhancement that warrants special attention.

In addition, given the lack of random assignment,-the recommended design includes multiple quasi-experimental comparisons. The purpose of multiple comparisons is to strengthen the overall design: Although information from any one of the comparisons is relatively weak evidence about causality, a consistent pattern of findings across multiple quasi-experimental comparisons increases one's confidence that the treatment being studied accounts for the differences observed in behavior at follow-up.

The recommended design includes both a time series component and a nonequivalent comparison group component that makes use of multiple comparison groups. Use of two comparison methods (time series and nonequivalent group comparisons) and of multiple nonequivalent comparison groups improves the evaluation's ability to make statements about the effectiveness of enhanced treatment.

(1) *Time series design.* In this design the behavior of patients who received treatment before enhancements were implemented is compared with the behavior of those treated more comprehensively. This will allow us to plot, for example, for successive quarterly intake cohorts over the three year demonstration period, the proportion of patients who are found to be using drugs at follow-up.

If enhanced treatment does lead to a decrease in drug use, and assuming that it takes projects some time (e.g., the first year of the demonstration) to implement their proposed interventions, then smaller proportions of patients entering in the latter stages of the demonstration (e.g., the second and third years) should be found to be using drugs at follow-up, and the plot of percent using drugs at follow-up by intake cohort should show a negative slope (i.e., the line should move downward).

Time series analyses such as these will be conducted for each of the evaluation's patient outcome variables (e.g., retention, drug use, criminal activities). The data will be analyzed using the recently-developed simplified time series analysis (STSA).

The time series provides a design in which each project in essence serves as its own control—i.e., the contrast involves comparing the project's "before" patients with its "after" patients (before and after implementation of the project's enhanced treatment intervention). Before-after designs are relatively weak, however, because the evaluator has no control over the characteristics of the patients who enter treatment in the before and after periods or over the influence of factors outside of the

experiment that may differ for the before and after periods. Consequently, these designs do not allow one confidently to rule out differences in pretreatment characteristics or factors outside of the experiment as explanations for any differences observed in post-treatment behavior.

(2) *Nonequivalent comparison group design.* To reinforce the evaluation's ability to make inferences about enhanced treatment, this second type of quasi-experimental comparison will provide a second perspective on the effects of enhanced treatment. This second type of comparison will be comprised of patients who have characteristics similar to the comprehensively-treated patients but who are treated at similar but non-comprehensive treatment programs.

Designs such as this are referred to as nonequivalent comparison group designs. Although these designs also are relatively weak, they can be strengthened by reducing the heterogeneity of the groups—i.e., reducing the variability in patient characteristics within the groups. Thus, instead of comparing all patients treated in enhanced treatment with a heterogeneous group of patients treated noncomprehensively, we would identify specific combinations of treatment type (e.g., methadone, outpatient drug free) and patient type (e.g., racial/ethnic group, type of drug used), and compare the outcomes for more-comprehensively treated versus less-comprehensively treated groups. For example, to examine the effectiveness of enhanced methadone treatment (e.g., a methadone program that includes adequate daily doses of methadone, regular urine screening, and comprehensive assessment and treatment of co-occurring health and psychosocial problems) for adult Hispanic males, we would compare the outcomes for adult Hispanic men treated at methadone programs where enhanced treatment had been implemented with the outcomes for adult Hispanic men treated at non-enhanced programs (e.g., programs providing only methadone and periodic urine screening).

The primary benefit of this strategy is that it helps to increase confidence that the treatment being examined accounts for any differences observed in the behavior of the groups at follow-up, but it does so only weakly. To strengthen this component of the design, the use of multiple nonequivalent comparisons for each comprehensively treated subgroup is proposed, on the theory that multiple comparisons pointing in the same direction increase one's confidence in drawing inferences (i.e., four nondefinitive quasi-experimental comparisons showing better outcomes for the enhanced treatment group would provide more confidence in the superiority of enhanced treatment than one such comparison). Consequently, the recommended design involves multiple comparison groups for each patient type by treatment type subgroup that received enhanced treatment.

These comparison groups can be constituted from several sources. First, comparison groups will be comprised from among the patients of programs found on the basis of administrative outcomes data not to have enhanced treatment (i.e., programs that do not implement their intended enhancements). Although the validity of implemented vs not implemented comparisons can be compromised in a variety of ways, such comparisons are included in the design for practical purposes: It is one type of comparison group that is readily accessible and is under OTI's control.

If there are insufficient numbers of non-comprehensive programs within the OTI grant pool, the other types of recommended nonequivalent groups are derived from outside of the OTI evaluation. A major benefit of creating comparison groups from secondary sources is the substantial cost savings to NTIES that result from not having to interview large groups of patients who received non-enhanced treatment. The first of these secondary sources is the NIDA-funded Drug Abuse Treatment Outcome Study (DATOS). The major purpose of DATOS is to document the effectiveness of "standard" drug abuse treatment—treatment that meets current standards, but does not include many of the enhancements that are now being tested through the many service and research demonstrations that are currently being carried out across the country. In fact, the existence of so many demonstrations is a major complication for DATOS—the state of the art in drug abuse treatment is changing so rapidly, and there are so many treatment enhancements currently being tested, that it is difficult to find programs that are not touched in some way by the myriad of enhancement efforts. Current plans call for DATOS to include up to 50 treatment programs in 12–15 cities.

A second external source of nonequivalent comparison groups is NIDA's proposed Adolescent DATOS study. Adolescent DATOS is a study of the effectiveness of "standard" treatment for adolescents, and is designed to correspond to the "adult" DATOS. Given the emphasis in the OTI demonstrations, particularly in Critical Populations, on improving treatment for adolescents, Adolescent DATOS could be a very important source of comparison patients. NIDA anticipates awarding the contract for the conduct of Adolescent DATOS during FY91.

A third external source of nonequivalent groups is the Treatment Outcome Prospective Study (TOPS) data base. TOPS was a large, multicohort, follow-up study of the natural history of drug abuse treatment. Intake cohorts for 1979, 1980, and 1981 were studied, and were followed up at 3 months, one year, and three years post-treatment. TOPS was a study of "standard" drug abuse treatment circa 1980, in the same way that DATOS may be thought of as a study of "standard" treatment circa 1990. Although TOPS will not provide certain kinds of comparisons (e.g., cocaine use was much less prevalent in 1980 than now, and crack had yet to be invented), it will be a useful source for many comparisons.

C. Overview of Data Collection Plan

The recommended evaluation design described above was significantly influenced by the magnitude of the OTI demonstrations. Based on an initial review of the funded applications, we estimated that more than 400 organizations that provide drug treatment (more than 200 in Target Cities, about 150 in the Critical Populations, and 50 or more in the two Criminal Justice demonstrations), located in more than 35 states, are participating in the demonstrations. This fact, combined with the inferential limitations imposed by the lack of random assignment, suggested a data collection strategy that relies relatively heavily on the grantees (and sub-grantees) to provide much of the process data.

In addition, many grantees described in their applications "local" (i.e., project-specific) evaluations. We recognized that those local evaluations represented a potential resource to the national evaluation, and that the national evaluation should integrate the findings of the local evaluations where feasible. Review of the applications and experience at the grantee meeting sponsored by OTI in December, 1990, suggests that it will be difficult to integrate the local evaluations consistently. They should, however, be kept in mind as a potential source of additional or corroborative information.

The following sections summarize the proposed approach to data collection

and quality control, and the proposed timing of the evaluation.

1. Data Requirements and Responsibilities

The recommended data collection design is a hierarchical one in which basic data are provided by all projects, but more detailed data are collected only from progressively smaller subsets of projects. All projects will be expected to provide data that describe their activities and the environments in which they operate, and also to maintain an accurate patient discharge log. A subset of projects—up to half of all projects—will be asked to participate in the collection of more detailed intake and in-treatment data. The additional data include a standardized intake assessment for all incoming patients and a records-based assessment of services received by all those who stay in treatment for at least three months. Finally, a subset of these will be asked to cooperate with a follow-up study, in which the evaluation contractor will independently conduct follow-up interviews with a sample of patients at three months post-treatment, and again at 12 months post-treatment for a subset. The data collection hierarchy is summarized in tabular form in Exhibit C at the end of section I.

a. *Level 1: Data provided by all grantees.* Under the proposed design, all projects (Level 1) will be required to submit three kinds of data. First, all projects supported under the demonstrations will submit Activity Reports (ARs) on a quarterly basis. Second, all project directors will submit Project Director Questionnaires (PDQs) semi-annually. Third, all projects will be required to maintain an accurate discharge log, that identifies all patients discharged from treatment during a given month. All of these instruments (AR, PDQ, and discharge log) will be based on existing instruments, and involve relatively minimal burden on the projects. The forms will be filled out by the projects in hard copy, and sent to the contractor to be keyed and added to the evaluation data base.

b. *Level 2: Detailed intake and in-treatment assessments.* At the next level (Level 2), in a subset of grantees a system will be established that will complete a standard intake assessment for all patients who enter treatment during the demonstration. This assessment will be made using the intake form of the Individual Assessment Profile (IAP–I), which was developed for the Methadone Treatment Quality Assurance System (MTQAS) and has been field tested. Although collection of the information covered by the IAP–I typically takes about 45 minutes, much of the information is already collected by projects in their standard intake assessment, and the IAP was designed to collect information that is useful in treatment planning. The IAP will be administered by the evaluation contractor.

In addition to the IAP, projects included in Level 2 will also be asked to participate in the completion of the IAP intreatment form (IAP–T) and the Patient Record Abstraction Forms (PRAFs) for all incoming patients who remain in treatment for at least three months. Both the IAP–T and the PRAF generate information about services received, are based on patient self-report (IAP–T) or on program clinical records (PRAF). The PRAF was developed for use in MTQAS, and is filled out by examining clinical records and recording information about services provided. Consequently, only projects whose clinical records contain the kinds of information called for in the PRAF should be included in Level 2.

For projects not included in Level 2, the national evaluation contractor will arrange to obtain data from NIDA's Client Data System (CDS) covering the demonstration period. CDS contains descriptive information, similar to that collected in the past through CODAP, for all patients entering treatment. Although less detailed than IAP, the CDS data will permit the national evaluation to describe basic characteristics of patients at all projects participating in the demonstration, and to describe in more detail the patients served by those projects that participate in Level 2.

c. *Level 3: Patient follow-up.* At the final level (Level 3), the national evaluation contractor will implement a follow-up interviewing system in a subset of the Level 2 projects. In these projects, national evaluation interviewers will conduct follow-up interviews with all patients who entered treatment during the demonstration period.

Summary information concerning the scope of the data collection effort was provided earlier in Exhibit A, which showed the estimated numbers of programs in each of the demonstrations that will participate in each of the levels of data collection.

2. Data Collection Schedule

A phased approach to the data collection is envisioned. In the first phase, the OMB Clearance package for the administrative outcomes data is completed and begins its way through the clearance process. While that process is underway, a training and quality control system for the collection of the administrative outcomes data will be developed by OTI and put in place. This will include: (1) implementation of a process that will inform the grantees about the important features of the evaluation and what will be expected of the various parties involved (e.g., grantees, NTIES contractor, OTI staff, State Authority), and elicit their cooperation; (2) develop draft operations manuals that will describe for grantees how to collect data for NTIES; and (3) field test some or all of the instruments and procedures. As a result, when the administrative outcomes data collection is cleared, it can be immediately implemented by the NTIES contractor.

Phase Two will begin with the award of the main evaluation contract. This will be a planning phase, with two main objectives. This includes development of a detailed training and quality control system for the collection of those Level 3 data.

The second objective of Phase Two will be to identify specific quasi-experimental comparison groups for the patient outcome evaluation. The comparison groups will be tailored to match the demonstration patients for whom outcome will be studied (Level 3 data collection). Consequently, identification of the comparison groups will depend in part on early information collected in the administrative outcomes component concerning degree of implementation of proposed interventions by the demonstration projects (since only well-implemented projects, will be included in Level 3 data collection).

The third objective of Phase Two is to implement a pilot test of the follow-up data collection plan. If possible, this pilot test should be conducted with the cooperation of one or more target cities local evaluators, to avoid delay caused by the OMB clearance process. This pilot test will include enough patients to provide early information about treatment outcome for one or more critical populations of particular policy interest.

Finally, Phase Three will involve the implementation of all data collection efforts, and providing quality control monitoring.

a. *Phase One.* First, it is critical to the administrative outcomes component of the study that adequate baseline data be collected—i.e., data that describe what the projects were like before the interventions supported by the OTI demonstrations were implemented. Consequently, the ultimate success of the administrative outcomes component of the study depends in large part on

getting the system for collecting the AR and grantee-collected intake and in-treatment data in place as quickly as possible. This is an important part of the rationale for using the MTQAS and DATOS instruments (in addition to providing comparability with those two major treatment data collection efforts): They already exist, and the MTQAS instruments will have already passed through the OMB clearance procedure. Given that OMB will have already been cleared, the clearance of their use in this evaluation will be facilitated. Establishing this data collection system as early as possible must be a top priority of the evaluation effort.

b. *Phase Two.* In Phase Two, plans for specific quasiexperimental comparison groups will be developed. These comparison groups will be groups of drug treatment patients who have characteristics similar to those of patients who have received comprehensive treatment through one of the demonstrations, but who have undergone "standard" (i.e., non-enhanced) drug abuse treatment. Comparison groups will be constituted both from within the OTI demonstrations, using patients who did not receive enhanced treatment, and from secondary sources.

Identifying appropriate comparison groups will require first a careful review of the four demonstrations to identify those projects that have adequately implemented comprehensive treatment and that are serving a population of interest. Appropriate comparison groups will be sought from three sources:

(1) Potential opportunities within the demonstrations (e.g., inadequately implemented projects, projects with approved but unfunded applications);

(2) The DATOS and Adolescent DATOS data bases;

(3) The TOPS data base; and

(4) The potential inclusion of experimental design requirements in the second round RFAs for these demonstrations (i.e., adding new projects, with built-in comparison groups, in the demonstrations' second year).

As shown earlier, it is anticipated that about 30 drug treatment providers in the Target Cities demonstration (3–5 per city), about 15 providers in the Critical Populations demonstration (3–5 for each specific target population), about 5 Correctional Settings projects, and about 5 Non-Incarcerated Criminal Justice Populations projects will be chosen for inclusion in the follow-up study. Exact numbers depend on the extent to which projects implement the proposed interventions, and the numbers of people served at well implemented programs. The evaluation contractor will determine the sample sizes needed to detect differences of the expected levels, and then select enough well implemented programs to provide the required numbers of patients.

Also during Phase Two, important methodological studies will be designed. For example, we know that the methods of data collection for NTIES and DATOS differ, and one or more methodological studies should be developed to examine the impact of these differences. Additionally, the NTIES hierarchical data collection scheme involves collection of similar data via different methods at different levels of the hierarchy. Consequently, methodological studies of the correspondence of data collected via different methods should be designed.

c. *Phase Three.* In Phase Three, the final data collection efforts, including follow-up interviews with patients, will be implemented and monitored. All patient follow-up data will be collected by the national evaluation team.

D. Specific Features of the Six Demonstration Evaluation

As noted above, although there is a common evaluation core that is shared by the six demonstration evaluations, it remains that the six demonstrations are quite different from one another, and therefore each evaluation contains idiosyncratic features. In the following sections these demonstration-specific features are described.

1. Target Cities Demonstration

For the Target Cities demonstration (RFA OT–90–01), OTI required applicants to include four mandatory treatment improvement activities: (1) Establish a Central Intake Unit (CIU) with automated patient tracking and referral systems; (2) provide comprehensive services to meet patients' complex needs, including biological/physical, psychological, instrumental, informational, vocational, educational, and lifestyle needs; (3) improve coordination among local drug abuse, health, mental health, education, law enforcement, judicial correctional, and human services agencies; (4) services for special populations—adolescents, racial and ethnic minorities, pregnant women, female addicts and their children, and residents of public housing—were to be emphasized. These four improvements are what might be thought of as the "intended intervention" or the Target Cities Demonstration.

a. *Overview of proposed grantee interventions.* Eight Target Cities applications were funded: Atlanta, GA; Albuquerque, NM; Baltimore, MD; Boston, MA; Los Angeles, CA; Milwaukee, WI; New York, NY; and San Juan, PR. Although the applications from each of these cities addressed in one way or another the basic elements specified in the RFA, the variability among the funded applications with regard to the specifics of proposed activities is considerable. For example, only one of the funded applications proposed a single, city-wide CIU through which all patients will be assessed and referred to treatment. In lieu of a single-site CIU, other funded applications proposed:

(1) Dividing the city into several clusters with a CIU for each cluster;

(2) Targeting and serving a high risk geographical section of the city with a single CIU and a treatment network within that section;

(3) Linking all publicly funded treatment facilities in the city together via a computer network, with each facility doing intake and assessment; and

(4) Identifying a specific subset of treatment facilities to serve as intake and assessment centers, and linking them by computer network to other treatment facilities to which incoming patients can be referred for treatment.

The range of services proposed under the rubric of comprehensive treatment for special populations is rather diverse as well. Some of the funded applications propose the development of specialized treatment components to address the specific needs of a target population (e.g., residential treatment center for women addicts and their children to promote post-partum abstinence). In other cities all participating treatment facilities will receive some aspect of enhanced treatment services, but treatment programs are not designated as providing specialized services for a single target population. Another variation is seen in one target city where "comprehensive treatment" is essentially defined as formal interprogram linkage and better coordination of available services.

With regard to improving service coordination, several alternatives have also been proposed, with some cities designating linkages involving formal contracts (e.g., formal agreements with hospitals to provide acute medical care), and others referring to unspecified linkages with criminal justice, health, education, and other human service agencies.

In summary, within the Target Cities Demonstration Program, the actual interventions proposed by the funded projects vary widely. The term "Central

Intake Unit" is operationalized in a variety of ways, and the range of services proposed as comprehensive treatment varies considerably from city to city. As a result, there is substantial variation in the interventions proposed in the eight funded projects.

b. *Specific target cities design features.* The variability of the strategies that the Target Cities projects are pursuing to address the objectives specified in the RFA, and the complexity of these systems-level strategies, combine to make a quasi-experiment or the designation of a comparison site problematic. A more appropriate evaluation strategy for such complex interventions is the multi-site case study. Case study methodology adapts well to situations where: (1) The boundaries separating the intervention from its context are not clearly established; and (2) it is important to assess changes in the intervention and its context over time. The concept of the "case" enables the evaluator to focus on a set of projects, with each project serving as a case, and to collect and analyze a combination of systems-level, service-level, and patient-level data (of both a qualitative and quantitative nature) systematically to identify the important factors influencing interagency collaboration, coordination, linkage, and other dimensions of impact.

The small number of Target Cities grantees (8) also makes a case study approach attractive. However, a city the size of Los Angeles, with its complex intervention and large geographical coverage, may more appropriately constitute four individual case studies (defined by the four geographical regions of the city that are targeted separately by the intervention) rather than a single case. Other Target Cities projects, such as New York, have targeted only one region of the city (Bronx-Harlem), making a single New York case a feasible approach.

The scope, complexity and geographical targets in each of the Target Cities projects will be examined to determine the number of individual case studies that will be required. If that number appear too large and the similarities across sites too great to maximize the information yield from the investment of evaluation resources, we will select a subset of Target Cities sites to include in an indepth, multi-site case study.

Depending on the size and complexity of the sites, a team of three to four individuals from the national evaluation team will conduct a 3-day site visit of each Target Cities project. Prior to the site visit, the site visit team will employ a two-stage procedure in preparation for the visit. First, each member of the team will review project-relevant documents, data and materials (project applications, progress reports, data summaries, etc.). Second, the team leader will contact the project director to obtain a list of relevant project staff and cross-systems "stakeholders" who should be interviewed in order to obtain a comprehensive perspective on the project's purpose, operation and impacts. As a protection against "selection bias" in identifying relevant stakeholders, the team will ask each interviewee after the completion of the interview to suggest other individuals who should be interviewed but were inadvertently omitted. The team will also interview patients (drop-outs as well as enrollees) in order to identify factors influencing access to and satisfaction with treatment and services. While on site, the team will collect additional documents (e.g., data, codebooks, policy manuals, training materials, legislation, etc.) that are relevant to the case study analysis.

Both qualitative and quantitative data analysis techniques will be used with the multiple varieties of data collected. Several techniques—standard in case study designs—will be employed to validate the data collected and the conclusions drawn from these data. Multiple data sources will be used to triangulate observations and to verify counts, service delivery records, etc. From these multiple data sources, a set of findings will be developed from each case, then link findings across similar cases to form more general propositions about these systems level interventions and the factors that affect their implementation and outcomes.

2. Critical Populations Demonstration

For the Critical Populations Demonstration (RFA OT–90–02), OTI sought applications proposing enhancement of existing treatment services to provide model comprehensive treatment for one or more of the following designated critical populations: Adolescents, racial/ethnic minorities, or residents of public housing. In addition, emphasis was given to projects providing services to those who are homeless, dually diagnosed, or live in rural areas.

Comprehensive treatment was defined as treatment that addresses the full spectrum of the patient's service needs (i.e., physical, psychological, instrumental, informational, vocational, educational, social, and cultural needs), and includes a broad spectrum of health, mental health, social, educational, vocational, and leisure time activities. The ultimate goal of this demonstration grant program as stated in the RFA is to improve treatment outcome for the designated critical populations by providing comprehensive treatment.

a. *Overview of proposed grantee interventions.* Eighty Critical Populations applications were funded, with grantees located in 32 states (including Alaska and Hawaii) and Washington, DC, as well as Puerto Rico, the Virgin Islands, and the Federated States of Micronesia. The variety of approaches and activities that were proposed by the funded applications is remarkable. There appear to be three major "types" among the funded Critical Populations projects. These include:

(1) Projects providing comprehensive treatment through the use of specialized services designed to meet the unique needs of one or more of the critical populations;

(2) Projects whose catchment area includes a sizable number of persons in one or more of the designated critical populations, and that propose to provide comprehensive treatment to those populations, although the proposed services are not tailored in any significant way to meet their special needs; and

(3) Some combination of the two (e.g. some special service such as housing assistance is offered for a particular critical population—e.g., public housing residents—but enhanced treatment services are received by all patients in the catchment area, which includes a large number of ethnic and racial minorities).

A review of the services that were proposed to enhance treatment for the critical populations indicates that no single pattern of service provision or approach to comprehensive treatment dominates the funded applications. Indeed, the wide variability in proposed service approaches makes it difficult to specify categories into which these projects might be grouped. Some projects propose unusual, and sometimes controversial, interventions as a major element in their treatment intervention (e.g. an outward bound project for adolescents, a cultural heritage trip to the patients' ancestral homeland). Other projects incorporate these more unique interventions within the framework of a more traditional treatment program (e.g., offering acupuncture along with basic substance abuse counseling and other services, offering recreational therapy as part of a comprehensive treatment program). Other projects propose offering innovative but less controversial services as part of their overall treatment program (e.g., establishing a

drug free housing zone in a public housing project; providing parents with housekeeping, cooking, and babysitting services during periods of high stress).

Additionally, a number of projects describe having existing programs that are already quite comprehensive in nature, to which they propose to add a specific component to provide a currently-unavailable service (e.g., an after school adolescent program for poly-substance abusers with co-existing mental illness). Many projects propose to add a combination of new services to expand the spectrum of services provided (e.g. provide residential care for adolescents, provide child care for female mothers, enhance medical care for all patients). Finally, one of the applications could be viewed as a mini-Target Cities proposal, containing essentially all of the elements necessary for such a program (Oakland: West Oakland Health Council).

Thus, the funded Critical Populations projects also present a very wide variety of proposed treatment interventions and activities designed to improve treatment outcome.

b. *Specific critical populations design features.* The basic design that is common to all six demonstrations covers all of the important features of the Critical Populations demonstration—in fact, the Critical Populations demonstration may be thought of as the prototype of that design. Consequently, no additional design components are proposed for the Critical Populations design.

3. *Correctional Settings Demonstration.*

For the Model Drug Abuse Treatment Programs for Correctional Settings (RFA OT–90–04), OTI specified that funds were to be used to enhance existing services offered in correctional settings "in order to move these programs closer to a model standard of comprehensiveness." Applications were solicited from prison systems—to improve upon state drug abuse treatment programs, raising them to model standards—and from local jails—to provide more comprehensive and better quality services in metropolitan jails. All applications were required to have some emphasis placed on treating racial and ethnic minorities. In addition to providing improved services to meet the inmates' complex needs (biological/physical, psychological, informational, vocational, educational, leisure-time and life-skills training), grant applicants were instructed that proposed projects should:

(1) Provide a systematic screening of inmates for history of drug use;

(2) Provide an indepth assessment of the inmates' complex service needs;

(3) Ensure continuity of care through aftercare in the community using a referral system; and

(4) Develop and adopt quality assurance and performance evaluation procedures.

a. *Overview of Proposed Grantee Interventions.* Nine Correctional Setting projects were funded. Three of these are projects in local jails, five in prisons, and one involves a network of juvenile detention facilities. Identification and treatment of ethnic minorities is emphasized in all. Additional target populations are also specified, such as adult male inmates, adult female inmates (including inmates with children), or juvenile offenders. All projects include a screening and evaluation component to identify inmates with substance abuse problems, with some programs using standardized instrumentation and others using locally developed screening and assessment protocols. Some programs proposed to screen all inmates coming into the system while others will screen only some (e.g., only inmates with a specified number of weeks/months left in sentence are screened for treatment).

Projects in prison settings have proposed a variety of treatment interventions, ranging from therapeutic communities (TCs) to intensive day treatment programs, with several programs offering combinations of TCs with other treatment approaches. All funded prison projects proposed a significant aftercare component.

Jail based programs generally focused on providing short-term, intensive, inpatient treatment, with a strong transition and aftercare component. Additionally, one project proposed the addition of specialized treatment services for dually diagnosed inmates.

In summary, the funded prison projects present the most variability with regard to proposed services, while the funded projects in local jail settings are more consistent in terms of the treatment model presented in their applications.

b. *Specific correctional settings design features.* In addition to the core data set (Level 1, Level 2, and Level 3 data described above) which we have proposed to collect across all four Demonstration Grant Programs, certain unique and important components of the Correctional Settings Program require further examination. One critical aspect of these projects is the screening/assessment and identification procedure. A thorough investigation of the intricacies of the various procedures employed across the ten sites could be accomplished via site visits. Of equal importance is the system of sanctions and incentives employed both during treatment and during aftercare. We propose to collect descriptive data on this system using the Directors Questionnaire and administrative outcomes using the AR. Finally, the level and requirements for patient supervision are considerably more intense in criminal justice treatment programs. Descriptive data will be collected on the supervision process (both during treatment and in aftercare) using the Directors Questionnaire, and the AR will provide data on administrative outcomes. Patient level data will be obtained on all these services in Level 2 and Level 3 programs via the PRAF and DATOS in-treatment and follow-up interviews.

4. Non-Incarcerated Criminal Justice Populations Demonstration

For the Model Drug Abuse Treatment Programs for Non-Incarcerated Criminal Justice Populations (RFA OT–90–03), OTI solicited applications to enhance services for two types of non-incarcerated criminal justice populations: (1) Those diverted to treatment by the criminal justice system as an alternative to incarceration; and (2) probationers and parolees considered to be high risks for criminal recidivism and drug use. The overall goal of this demonstration is to improve treatment outcome in these populations and to develop diversion and supervision programs to serve as national prototypes.

All applications were required to address the following goals: (1) Improve service delivery through better service coordination and case management; (2) identify and divert arrestees for whom substance abuse is a primary problem; (3) provide a broader spectrum of services to meet the person's complex treatment needs (biological/physical, psychological, instrumental, informational, vocational, educational, social, and cultural); (4) provide services to improve mental and physical health, reduce illicit drug use, reduce contact with the criminal justice system, and improve self-sufficiency; and (5) increase treatment program retention rates. It was additionally specified that programs must focus efforts on the special needs of racial/ethnic minorities and/or adolescents.

a. *Overview of proposed grantee interventions.* Ten Non-Incarcerated projects were funded, with five projects focusing on a diversionary population, three focusing on a probation/parole population, and two proposing services

to address the needs of both of these groups. In addition to focusing services on racial/ethnic minorities or adolescents, some proposals further specify the target population (e.g., first-time minor adolescent offenders, or felony offenders). Although the specifics of the treatment interventions proposed differ across applications, the model or approach to treatment is fairly consistent across settings. Essentially, the following elements were included in all funded applications: (1) Some basic eligibility determination which leads to screening and comprehensive intake assessment; (2) referral to treatment based on assessment results; (3) graduated sanctions and incentives while in treatment; (4) intensive supervision while in treatment; and (5) release into community based aftercare with continued supervision and service coordination. Treatment interventions proposed include residential, day treatment, half-way house, and outpatient approaches. In summary, considerable variability also exists in the Non-Incarcerated Populations Demonstration with regard to the specifics of assessment and treatment protocols proposed; however, all programs adhere to the same basic model of treatment.

b. *Specific non-incarcerated populations design features.* Specific design features proposed for projects funded under the Non-Incarcerated Populations Demonstration are similar to those proposed for the Correctional Settings projects. That is, in addition to the core set of data, information should be collected on the screening and diversion process, sanctions and incentives employed during treatment and in aftercare, and the supervision procedure used in treatment and aftercare. Methods of data collection to be used are identical to those delineated for the Correctional Settings projects.

5. Adolescents/Juvenile Justice Demonstration

The Adolescents/Juvenile Justice Demonstration (RFA TI–91–01), is an expansion of one of the Critical Population target groups. This demonstration program seeks to assist States and communities to enhance and expand the availability of model comprehensive drug abuse treatment programs for adolescents with drug abuse problems and who have, or are at risk for, committing juvenile offenses or crimes.

Awards will be made for the purposes of implementing treatment enhancement projects in existing programs (programs should have been providing base-line services to the target population for at least one year prior to date of submission of their application) and for creating new treatment capacity, provided:

(1) The capacity created is in keeping with OTI's model standards of care; and

(2) The application contains sufficient documentation of need for additional capacity.

OTI will make these awards by September 30, 1991.

6. Residents of Public Housing Demonstration

This demonstration is also a continuation of the Critical Populations Demonstration to enhance and expand the availability of model comprehensive drug abuse treatment programs for residents of public housing, with the ultimate goal of improving treatment outcomes for this population.

OTI is particularly interested in projects that address the following "special" subgroups of residents of public housing:

- Residents of Public Housing at Imminent Risk of Becoming Homeless.
- Residents of Public Housing with Co-Occurring Disorders, i.e. HIV-seropositive disorders or mental health disorders.
- Residents of Public Housing in Rural Areas.

OTI will make these awards by September 30, 1991.

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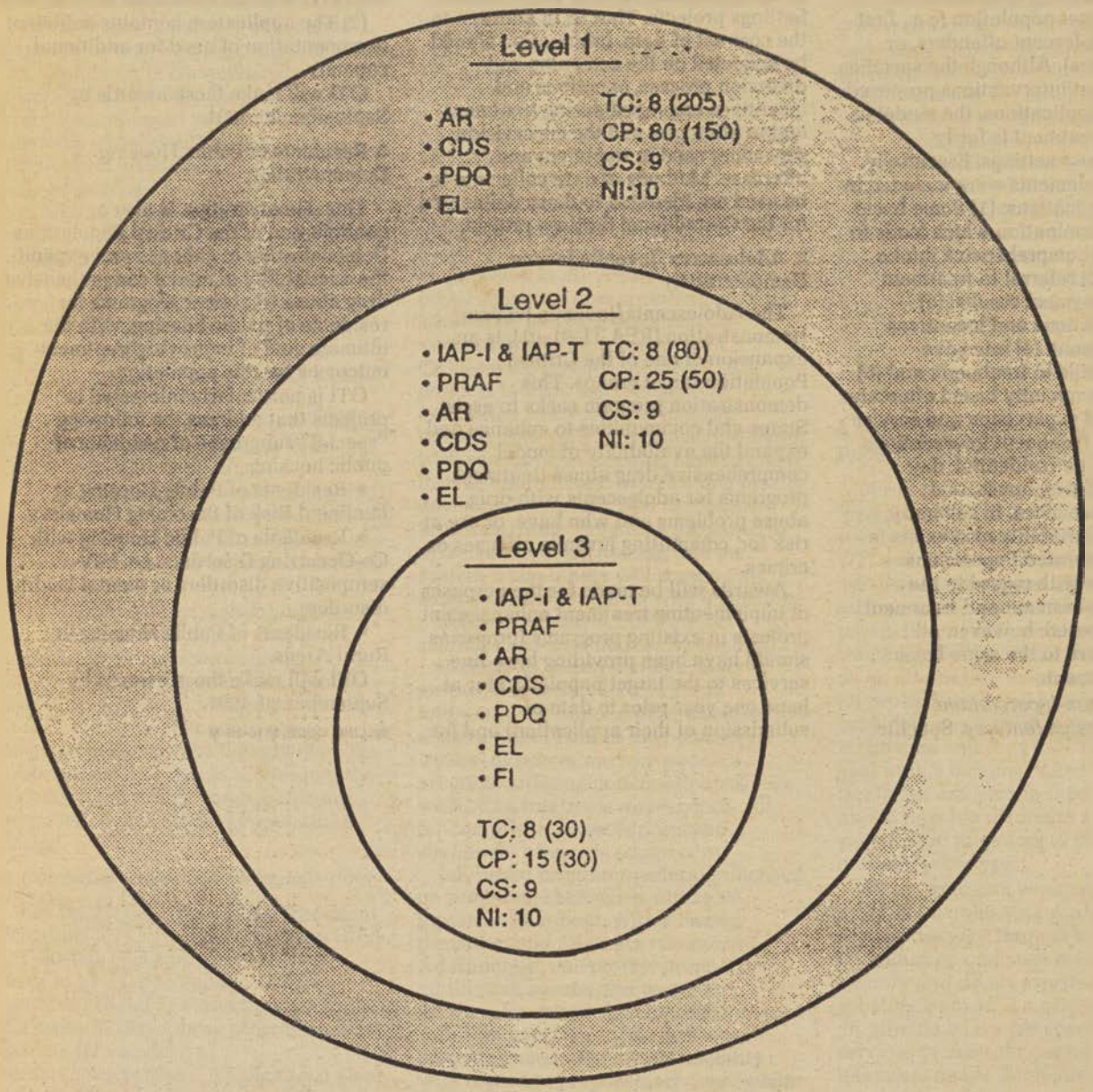
Figure 1. Hierarchical Data Collection Strategy



Note: Numbers reflect collection sites; Grantees (Subgrantees)

Legend:

TC	= Target Cities	CDS	= Client Data System
CP	= Critical Population	IAP-I	= Individual Assessment Profile - Intake
CS	= Correctional Settings	IAP-T	= Individual Assessment Profile - intreatment
NI	= Non-Incarcerated CJ Pop.	PRAF	= Patient Record Abstraction Form
AR	= Activity Report	PDQ	= Project Director Questionnaire
EL	= Exit Log	FI	= Follow-up Interviews

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EXHIBIT A.—SUMMARY OF PROPOSED DATA COLLECTION ACTIVITY COMMON TO ALL FOUR DEMONSTRATIONS

Component	Type of information	Source	Form	Estimated No. of collection sites: grantees (subgrantees [1])			
				TC	CP	CS	NI
Administrative Outcomes	Project Activities	Grantees	AR	8 (205)	77 (150)	9	10
	Client Characteristics	NIDA	CDS				
Client Outcomes		Grantees	IAP-I	8 (80)	25 (50)	9	10
	Treatment Received	Grantees	PRAF	8 (80)	25 (50)	9	10
	Project Structure and Environment	Grantees	PDQ	8 (205)	77 (150)	9	10
	In-treatment Behavior	Grantees	IAP-T	8 (30)	15 (30)	9	10
	Retention	Grantees	EL	8 (205)	77 (150)	9	10
	Post-treatment Behavior	Evaluation contractor	DATOS	8 (30)	15 (30)	9	10

[1] "Subgrantees" include all places where clients enter drug treatment.
Legend: TC=Target Cities; CP=Critical Population; CS=Correctional Sittings; NI=Non-Incarcerated Criminal Justice Populations; AR=Activity Report; CDS=Client Data System; IAP-I=Individual Assessment Profile, Intake; PRAF=Client Record Abstraction Form; DATOS=Drug Abuse Treatment Outcome Study; PDQ=Project Director Questionnaire; IAP-T=Individual Assessment Profile, In-Treatment; EL=Exit Log.

EXHIBIT C.—SUMMARY OF LEVELS OF PROPOSED DATA COLLECTION ACTIVITY COMMON TO ALL FOUR DEMONSTRATIONS

Level *	Component	Type of information	Source	Form
Level 1	Administrative Outcomes	Project Activities	Grantees	AR
		Client Characteristics	NIDA	CDS
		Project Structure & Environment	Grantees	PDQ
	Client Outcomes	Retention	Grantees	Discharge log
Level 2	Administrative Outcomes	Client Characteristics	Grantees	IAP
		Treatment Received	Grantees	PRAF
			Grantees	IAP-T
	Client outcomes	In-Treatment Behavior	Grantees	IAP-T
Level 3	Administrative Outcomes	Client Characteristics	Grantees	IAP-I
		Treatment Received	Grantees	IAP-T
	Client outcomes	In-treatment Behavior	Grantees	IAP-TS
		Post-treatment Behavior	Evaluation Contractor	DATOS

*Each successive level adds additional data forms to those used in the level before.
Legend: AR=Activity Report; CDS=Client Data System; IAP-I=Individual Assessment Profile—Intake Version; IAP-T=Individual Assessment Profile—Treatment Version; PRAF=Patient Record Abstraction Form; DATOS=Drug Abuse Treatment Outcome Study Instrumentation; PDQ=Project Directors Questionnaire

Section II—Community Impact Evaluation Design

1.1 Overview

"Community" is a broad concept which can be defined in a variety of contexts: as a geographic area (a neighborhood), a community of similar persons (the drug user community) or a community of services (network of treatment providers). The enhancement of drug treatment services in an area can have a real effect on each of these communities, though, unlike the effect services may have on individuals (patient-level outcome), the effect on communities is measurable or detectable only when the scope of the service effort is fairly large. Finally, there are important considerations related to the attribution of community impact to new or enhanced services. Service delivery units operate in complex social, demographic and political contexts. Changes in traditional indicators of community impact such as crime rates or emergency room episodes come from diverse sources: changes in drug price and purity in an area, police crackdown efforts, population shifts, national prevention/education campaigns as well as the presence of new, enhanced treatment services. It is, therefore, critical to define the potential scope of impact at each level, and to collect data specifically targeted to pick up both impact and the source of the impact.

Based on a review of literature and completion of a descriptive analysis of grantees, a hierarchical design structure with the most intensive effort focused on relatively large scale projects—larger individual service delivery units and the eight large citywide applicants is suggested. Instruments suggested are geared to specific definitions of community, e.g., the impact on the community of treatment providers is assessed through interviews, focus groups, and structured observations; whereas the community as a geographic area or neighborhood is assessed through telephone surveys and examination of key indicator data.

In this model all SDUs receive Level I attention, a subset of those will receive Level II attention and a further subset will receive Level III attention. Therefore, the most intensive data collection will occur in Level III and includes all data elements of the other two levels.

1.2 The Community Impacts Analysis Model

The community impacts evaluation and service delivery unit (SDU) selection will be structured hierarchically, such that all service delivery units will be evaluated in terms of general community characteristics (Level I) and decreasing numbers will be evaluated at higher intensity levels (Levels II and III). (Figure 1 at the end of section II).

Level I

Level I evaluation includes ambient community characteristic measures; measures of poverty, health problems, crime rates. It addresses the broadest base of treatment units—almost 100 SDUs from the Critical Populations, Correctional Settings and Non-Incarcerated Offenders grant programs and approximately 250–350 SDUs in the Target Cities effort.

As was discussed above, much of the total grantee pool is only marginally suitable for community impacts analysis. For many, the small marginal impact of the enhancement (e.g., the addition of staff or increase in the quality of a single aspect of services) in combination with finite evaluation

resources and non-experimental design conditions, severely constrain the ability to measure community impact. Instead we suggest evaluating the relative community contexts of SDUs, a type of evaluation which looks at the interaction of community variables with program outcome.

In addition to patient population diversity, the diversity of the sociodemographic settings of SDUs in the OTI demonstration programs is enormous. Many providers operate in core areas of some of the most dangerous cities in the country. Others are located in suburban areas and are not operating under the same types of constraints as do their inner city counterparts. Still others are located in very rural areas where crime rates are low, but are still characterized by problems such as poverty and infant mortality. The goals in characterizing all SDUs in terms of community context are:

(1) To draw a clear picture of the multiple settings in which drug treatment operates, and

(2) To provide contextual data for the analysis of patient outcome data.

The objective of the first goal is to enable OTI to describe all of its grantees in terms of comparable sociodemographic variables. In meeting the second goal, these data can be used to weight or to help model outcome data. For example, providers operating in the most disrupted settings may have less easily detectable community impact, given the level of the ancillary community problems and the many external confounding factors, e.g. a 10 percent effect in these areas may be comparable to a 30 percent effect in less problematic areas. These same SDUs may produce different levels of patient level impact in the same way and for the same reasons. It is important to bear in mind that these data are not intended to be used for measuring impact, but rather to provide a framework of the community in which other measures are analyzed and interpreted.

The definition of community in Level I is a geographic area, the area in which the SDU operates, the area of the city or county, defined by census or block units. It is unlikely that county areas or even census tracks are sufficiently small for use with SDUs. Census tracks are often sufficiently heterogenous that they may hide the real characteristics of the SDU's environment. "Neighborhoods" will be constructed from block level census data. These "neighborhoods" should then be the unit for collecting information, such as police data and as the frame for residents surveys in Level III. The community described through the community context variables is the physical setting of the drug treatment enhancement and may not always be the specific community of persons using the services. For example, a program in an inner city area may draw heavily from its neighborhood for patients, but also draws patients from other areas of the city. Providers who are physically located a great distance from their service population, e.g., an inpatient hospital serving an urban population but located in a rural or suburban area, will be reviewed individually for the appropriate community data for their characterization.

In summary, in Level I the evaluation unit is the "neighborhood" of the treatment provider. This data will link patient and program process outcomes to contextual variables (stratified appropriately when possible to make full use of their analytic potential), which will be collected at baseline, and at 18 months. Measures suggested for inclusion as community context data include: population and demographic statistics; socioeconomic statistics; health and social welfare statistics; criminal justice statistics; city/county resource allocation statistics. They are described in detail in section 2.0.

Level II

Level II efforts will address a different definition of community impact, the impact of the program on the community of treatment providers. The unit of analysis is the SDU, and the network of services with which it interacts. This analysis will be with a subset of SDUs from the Critical Populations, Correctional Setting and Non-Incarcerated Offenders and a sample of SDUs within the eight Target Cities grantees. These sites will be drawn using methodology described in detail later in this section. In addition, this subset will include those programs which may have measurable impact on other drug treatment and social service programs in the catchment area of the funded service delivery unit. For example, a program offering greatly increased services for pregnant women in an area of limited prenatal service availability may have a measurable effect on associated agencies in managing these patients, and would be a good candidate for inclusion in the sample.

The rationale for constructing a definition of community from a network of treatment providers follows from OTI's demonstration effort goals. OTI treatment enhancement grants seek to develop and enhance a comprehensive service base that addresses multiple needs of individuals at risk of and suffering from drug abuse. In addition, OTI seeks to alter perceptions of drug treatment and increase efficiency of service utilization within a broader community of providers. To achieve these goals, OTI provides support to treatment delivery units that employ case management, referral services, training and networking activities as their primary care enhancements. These activities may have observable effects on the social service providers within a community and may be measurable by analyzing changes within and among the community of providers. Primary changes will be associated with increased collaboration or coordination between service units. The extent to which the service structure is more clearly developed, utilized, and accepted from one data collection point to the next, indicates the impact on the community of providers. In looking at these changes, the research will emphasize structure and practice as well as knowledge and attitudes.

Effects on the community of providers may be discernable by qualitatively assessing attitudes, opinions, and service infrastructure through focus groups and site visits within and across a community of providers. Effects throughout a community of providers may also be felt by quantitatively assessing spread, distribution, and patterns (e.g., "traffic") of patients, referral patterns, and utilization of services across service delivery units and service sectors. These quantitative process measures will help inform an impacts assessment among the community of providers by describing interagency activities, burden sharing among providers (burden defined as caseload, casemix, and throughput of patients), informal and formal linkages among providers, etcetera. This type of analysis will help determine the degree to which OTI's objectives of creating networks of agencies (the community of providers) have been met. Such a quantitative assessment can also be used to explain attitudes and practices described qualitatively, and vice versa.

In summary, Level II will evaluate the impact of OTI-funded treatment enhancements on the community of providers by assessing changes in knowledge, attitudes, and practices among a community of providers (e.g., social service and drug treatment staff) relative to a treatment enhancement and relative to those measures collected in Level I.

The instrument for data collection in Level 2 are described in greater detail in section 2. The data elements to be assessed include:

- Knowledge & attitudes about drug treatment;
- Knowledge & attitudes about drug treatment patients,
- Knowledge & attitudes about OTI drug treatment provider (SDU);
- Knowledge & attitudes about OTI drug treatment provider (SDU) patients;
- Policies and procedures that demonstrate comprehensive/continuum of care;
- Process measures ("traffic").
- Quality of care.

Level III

Level III represents the most intense data collection effort of the hierarchy, because it involves all efforts of Levels I and II, as well as its own. At this level the evaluator will use multiple methods and indicators to assess impact. All Level III SDUs will have participated in Level I and II data collection procedures. It is strongly suggested that all SDUs selected for community impacts analysis at this level also be those selected for the more intense patient, program process and follow up data collection within the patient impact portion of NTIES. Methodology described in sections which follow outlines the site selection plan for this level. The selection is made on the basis of both OTI's general concerns for representation and on the basis of provision of SDUs with adequate scope.

As discussed earlier, a complete evaluation of community impact is limited by three factors: (1) The ability to detect effect at all, (2) the ability to attribute that effect to a program, and (3) the cost structure within which evaluation efforts operate. Level III analysis pertains to those service delivery units and contexts that allow us to detect communitywide effects (because of scope, magnitude, and configuration of the intervention), to attribute these effects to treatment, and to accomplish this within an existing cost structure. We have included in this definition of appropriateness for Level III investigation such elements as magnitude of investment, size, number of patients and, if small, potential for discernible impact, e.g. a closed prison community.

The data elements collected in Levels I and II are part of this final Level's analysis and will not be listed again. In addition, the following categories of data will be collected at three points in time using the instruments described in Section 2.

- Crime and victimization in the community: fear of crime, experience with crime, feelings of security, risk taking behaviors
- Level of knowledge and attitudes toward drug use and drug treatment services in the community, among key community leaders
- Perceptions and experiences of community leaders and members with the specific treatment provider

At this final level of analysis the community impacts evaluator would work closely with the data collection and analysis of patient and program process level, as these data are both theoretically and empirically linked.

1.4 Program Descriptions and the Creation of a Classification System

Early in the process of developing strategies for program evaluation on both the patient and community level, it became apparent that greater detail was needed on the over 100 demonstration treatment units and the hundreds of service delivery units within the Target Cities projects. Under contract to OTI, Abt Associates undertook a review of all approved applications to describe and to classify grantees for the purposes of determining appropriateness for evaluation and to determine the variability of treatment providers in terms of size, goals, services delivered, and modalities represented.

The resultant data were converted into a SPSS data file. Each provider record includes over 700 data elements and covers data on the programs both prior to OTI funding and what is planned for after the initiation of the grant effort. We will briefly summarize only a portion of those results here as foundation for the discussion of the creation of a site selection frame or typology.

Critical Populations Program

There were 80 programs funded in the Critical Populations grant program, ranging in size from programs serving less than 60 patients per year to those serving over 10,000 per year. Critical populations programs are distributed across 31 states and the District of Columbia, Puerto Rico, the Virgin Islands and Micronesia.

Of all of the grant programs, Critical Populations serves the greatest variety of patients in the widest variety of settings. Treatment providers are widely distributed across the continental U.S., providing services in 31 states and the District of Columbia, Puerto Rico, the Virgin Islands and Micronesia. California has the largest number of SDUs participating in the program (N=15), though other states such as New York, Florida and Illinois each have more than five SDU participants.

In addition, SDUs are also of widely varying sizes, as measured by patient capacity ranging from a few small providers of less than 60 patients to a few very large providers with capacities of over 10,000 patients yearly (N=3). The majority of these providers are fairly high volume service delivery units and have the capacity to offer services to many patients each year. The median number of patients providers were able to serve yearly prior to the grant enhancement was approximately 25 persons. On average the OTI program is expanding that service capacity base by just over 200 patients. A few very large programs (N=3) will be adding more than 900 new patients as a result of the OTI funding.

The Critical Populations grant program is also enhancing services to populations and areas of high need. Some grantees, such as the one in the Virgin Islands, are new efforts and represent the only treatment program in a large geographic area. In addition:

17% target underserved rural areas;
27% target the homeless;
27% target intravenous drug users; and
40% target dually-diagnosed patients.

SDUs were asked to characterize their primary modality type and secondary modality type. They were given two descriptive options (primary and secondary modality or program type), since we found that 36 percent of SDUs incorporate more than one treatment modality within their operating unit. The majority (56%) of SDUs in the Critical Populations program classify themselves primarily as out-patient drug free services. Another 15 percent are primarily residential therapeutic communities and an additional 15 percent are other types of residential programs including one inpatient hospital program. There are also three primary detoxification SDUs and one day reporting provider.

With respect to the racial and ethnic composition of patients before the OTI enhancements, and the distribution of patients who will be added after the enhancements are operational, the number of minorities served increases with the OTI grant. A small number of programs serve a single minority almost exclusively, defined as more than 95 percent of the patient population.

Prior to enhancement, 21 percent (N=16) of the grantees are programs exclusively for adolescents (persons 17 years old or less), 26 percent are limited to adults and the remainder have a casemix of the two (Table 6).

Among the Critical Populations grantees, the most frequently cited primary drug problem was polydrug use (56% of providers), followed by cocaine

(14%), alcohol (13%), crack (8%), heroin (8%) and marijuana (1%). Note that for this item, percentages reflect numbers of providers and not patient aggregates.

In addition to the criminal justice sources, a large number of clients come to programs from other sources. An average of 29 percent of patients are referred through social services, 3 percent through churches, 10 percent through schools, 10 percent from clinicians and 9 percent through hospital referrals. These figures also indicate that a large number of patients are self selected, that is, volunteer for treatment.

While many grantees offer elements of staff training and coordination in their enhanced services, SDUs have been categorized in terms of their principal enhancement focus: staff training, staff coordination or primary care. Using this definitional system, all but two SDUs are primary care enhancements. Many SDU's are greatly expanding services as a result of the OTI funding. Movement toward a comprehensive care milieu in affected SDU's has been greatly enhanced with the addition of these funds. For example, case management services are now available in many of the SDUs. Other services increasing substantially include aftercare, life skills training, health education, vocational services and pre-release screening. As this demonstrates, the OTI enhancements are adding a considerable breadth of services in many areas.

Correctional Setting Program

The nine SDUs in the Correctional Setting grant program are scattered across the United States, a third of them located in the Northeast region (n=3). Participating treatment providers are most commonly housed in State prison settings (n=4), but a slim majority are in other types of correctional facilities. These include three SDUs that are in jails, one in a state prison for women, and the other one is in a secured facility for juvenile offenders.

The capacities of the SDUs in this program have been greatly enhanced through the OTI funding. Prior to new enhancements, SDU size ranged from 30 patients to over 3000 patients per year. With the enhancements, programs will be adding an average of 476 persons to their services yearly. On average, these providers will also be adding 10 staff members with the enhancement.

The majority of providers in the Correctional Settings program characterize their services prior to the enhancement as residential therapeutic communities or residential programs operating under some other treatment philosophy. There is also one provider who was primarily an out-patient drug free program however. The grant enhancement is the addition of a residential TC or other residential component in 8 of the 9 cases.

The majority of providers in this program serve multiple minority groups. With the grant enhancement, 38% of providers will have patient populations which are 20% or greater Hispanic and 75% will have patient populations greater than 20% Black. Three providers will serve from 5 to 30% Native American. There are also correctional SDUs with unique target populations, due to the location of their facility, such as the prison programs in Hawaii, primarily for Asians/Pacific Islanders and the Native American program in North Dakota.

Only one of these facilities is a dedicated juvenile (17 or under) facility, though one third of all others report up to 18% juveniles in their populations. Only one of these SDUs is a dedicated service for women; six of the nine however serve both men and women. The average percentage of women in mixed services is just under 20%.

The types of services the correctional settings SDUs will provide are varied. While many providers offered a range of services prior to the enhancement, some areas are appreciably enhanced. For example, two programs were unable to provide case management services prior to this effort; all nine programs will now provide that service. Similarly, seven of the nine programs will now offer aftercare services, whereas, prior to OTI funding only three providers were able to offer such services.

Non-Incarcerated Offender Program

Non-Incarcerated Offender SDUs are located in nine states and Washington, DC. Five of the nine are serving urban areas and three serve cross area populations (that is patients who come from both urban and rural areas).

Prior to the OTI enhancement SDUs in this program reported yearly capacities from 30–1500 patients with an average capacity of 527 patients. With the OTI enhancement, that capacity has increased to range from 135 to 1800 patients, with an average yearly capacity of 914 patients. Since many of these providers are parole and probation services, some patients may repeat within a years' time.

Like all of the OTI grant programs the Non-Incarcerated Offender program serves large numbers of ethnic minorities. Prior to OTI funding, the average percentage of Hispanics served in these SDUs was about 8%; after the enhancement that average will be almost doubled to 15%. One program estimates that it will serve over 40% Hispanics. Similarly, the percentage of Blacks served in these SDUs will more than double after enhancement, going from an average of 24% Black prior to funding to 49% Black after. Funding will also allow more programs to add Asian and Native American patients to their systems.

Two of the nine SDUs are designed exclusively for adolescents; however, three other providers have some adolescents (ranging from 5–25%) in their treatment population. The majority of offenders served in this program are males. The average percentage of females prior to the enhancement is approximately 20%. This figure increases with the OTI program to 23%. There are, however, two programs serving large.numbers (over one-third) of females, including pregnant females.

Target Cities Program

Preliminary estimates of the number of service delivery units within the eight Target Cities totals some 230. A descriptive analysis similar to that completed for the Critical Populations and Criminal Justice populations has not been undertaken because the information will not be available until July 1991.

With respect to regional balance, half of the Target Cities are located along the East Coast of the United States, ranging from Boston at the northern end to Atlanta on the southern. The remaining fifty percent are located in North Central, South Western, and Western regions, with the exception of San Juan in the Caribbean. Each of the eight Target Cities is located within a major metropolitan area, and in aggregate serves an urban-based population.

With respect to demographics of populations served within the TC grants, each effort proposes to serve ethnic and racial minorities, with some variance in percentage distribution largely reflecting the demographic makeup of a city or area. With respect to minority populations served, six out of eight (75%) Target City programs serve Hispanics, seven out of eight (87.5%) serve Blacks, three out of eight (37.5%) serve Asians and/or Pacific Islanders, two out of eight (25%) serve Native Americans.

Within these summary tallies, however, there is wide variance in percentage distribution of ethnic and racial minorities served. For instance, Albuquerque serves approximately two thirds Hispanics (approximately 63%); in Los Angeles, Hispanics are the largest minority population served (27%), followed by Blacks (16%), Asian and

Pacific Islanders (6%), the remainder comprised of non-minority Whites. San Juan, like Albuquerque, has a predominantly Hispanic population but unlike Albuquerque this population is of mixed (Black, Hispanic, West Indian) descent and described as such in the proposal.

Each of the eight TC efforts have in common the targeting of pregnant and postpartum women and their infants (PPWI) as a primary population of concern. Similarly, almost all Target City efforts focus on women in general in addition to PPWI, with the exception of New York City which makes no explicit mention of targeting them except one assumes, as they are subsumed within PPWI and MICA populations. Three quarters (75%) of the Cities target adolescents; over one third target residents of public housing projects; and, one fourth target patients dually diagnosed with substance abuse and mental health disorders. Although each grant raised and discussed the problems of HIV infection and AIDS, only Los Angeles explicitly identified persons infected with HIV or persons with AIDS as service foci.

Each of the Target Cities represents multiple treatment modalities. Using the NDATUS taxonomy, the following summary statistics apply:

Modality	Cities	Percentage
Detoxification [1]	Bost, Milw, NYC, SJ.	50
hosp in-patient	Alb, Atl	25
free-standing res.	Balt, LA	25
Rehab Residential [1]	LA, SJ	25
hosp in-patient	—	—
short term	NYC	13
long term	Alb, Atl, Balt, Bost, Milw, NYC.	75
Ambulatory	Alb, Atl, Balt, Bost, LA.	100
outpatient	Milw, NYC, SJ	38
intensive outpat	Alb, Atl, Balt	25
detoxification	Atl, Balt	

[1] Note that where the specific subtype of modality was not clear, general type is indicated.

Each of the cities is constructing a *central intake unit* (CIU) system of patient entry to the treatment system, which includes tracking and monitoring functions. Some cities have created specific satellite referral centers, or gateways, for entry to the treatment system (e.g., Boston, Los Angeles, New York City). Moreover, less immediately identifiable as a structural change, each city, (except Albuquerque for which this information is missing), has created an organizational structure for ensuring community involvement. This is generally described as a policy steering committee or coordinating group.

Another way of assessing structural change is to examine the development of a treatment network, expressed as a set of participating agencies, both direct treatment units (e.g., a MICA unit), and non-treatment providing agencies. Community involvement, described by the number of participating agencies, varies from city to city. Because we do not have information with which to contextualize this agency involvement (e.g., percentage of all SDUs per city involved in the project), we face analytic constraints with respect to interpreting and/or comparing community involvement and scope of effort. Preliminary information shows that the Albuquerque grant details-involvement of six direct treatment or service providers out of ten involved agencies. Similarly, 17 agencies are involved in the Atlanta effort, one dozen of which are treatment providers. Boston presents just shy of 20 involved agencies, including some 16 treatment providers. In Los Angeles, 31 agencies have joined the Target City effort, of which 18 provide treatment services. In Milwaukee, upwards of 24 agencies will participate, of which 20 are direct service provision agencies. Note that these figures may be very conservative underestimates, however, given that many more agencies actually endorsed the program, and many of those participating may have within their domain multiple treatment and service units not individually recorded.

In Baltimore, 54 agencies are participating, of which 48 are treatment providers. Similarly, the New York City effort includes approximately 50 agencies of which an unspecified number provide direct services.[1] Lastly, San Juan registers the highend estimate, counting some 85 providers in the San Juan network of participating programs.[2]

Each of the eight cities have detailed extensive enhancement of primary care services and drug treatment. Outreach, case management, and expanded counseling programs are enhancements common to all efforts. A sample of the many primary care enhancements provided for within the Target City grants includes at a very minimum the addition of drug screening capability in Albuquerque; crisis intervention in Atlanta; medical care provision in most if not all sites; specialized services for PPWI and on-site medical care in Baltimore; child care, life skills and education services, and community supports in Boston; concentration on PPWI services in Los Angeles; social supports (e.g., child care and transportation assistance) in Milwaukee; pre-purchased treatment slots in New York City; relaxation and recreation therapies in San Juan.

[1] One might assume some 48 treatment providers involved if one subtracts the state and the city agencies certainly within this 50.

[2] This estimate was taken from the map of participating programs provided within the grant application: Each map notation denoting the presence of a participating service delivery unit.

1.5 Creation of a System of Classification of Service Delivery Units

This system is intended as a framework for site selection used to identify those providers most appropriate for inclusion in NTIES for patient, program and community impact data collection. We developed the criteria for the classification system in conjunction with OTI staff to reflect the goals stated in the RFAs to which grantees responded. These goals, such as sensitivity to minority issues, provision of a complete continuum of care, targeting special population such as women, the homeless or rural drug users, are translated into treatment strategies or programs in the grantees applications. Not all goals are met by all grantees, however. Therefore, to reflect the most salient criteria for evaluating program performance, we have translated program goals into services, using guidelines provided by OTI and adjusted to be appropriate for different types of treatment settings. The classification system and the sampling suggestions which emerge from it are based on a number of limitations of the data file and assumptions about its use.

1.5.1 Limitations of the Dataset

The data on which this system is based are derived from two sources: Grant applications submitted to OTI in FY 1990 for consideration in 1989–90 and telephone review of information completed in early 1991. Because the data are reflective of a presentation of self bias or "best foot forward" phenomenon on the one hand and self report on the other, use of this information will be limited to simple classifications.

Many SDUs have only recently become operational and are therefore answering questions about what they intend to do in the uncomfortable position between planning and implementation. Given these caveats, we have developed the SDU typology, operating under the following general assumptions.

1.5.2 General Assumptions of the Classification System

The classification system which will be described in detail in the next section is based on the following general assumptions:

1. OTI grantees represent a range of treatment services—from SDUs which provide a full complement of treatment services from outreach efforts to aftercare and follow up to SDUs which offer far more limited services. Since an important goal of the demonstration effort is to compare enhanced treatment settings with more standard ones, delineation of SDUs in terms of where their program fits in terms of a continuum of care is critical. This factor, however, should be seen as an independent variable which has a distribution in terms of what the providers implement, and in terms of what the individual patient accesses. While we can identify SDUs with different levels of service offered in creating the typology, this exercise is most useful in ensuring that the full range of service provision programs are represented. SDUs will be rescored in these criteria after implementation.

2. In creating definitions of "good" care, we note that some services are not essential for some types of care. For example, programs which target only male juvenile offenders may not need to provide child care as part of essential service complement. Similarly, providers in confined settings such as correctional facilities may not feel it as necessary to provide urine testing as diversion programs operating with nonincarcerated offenders in the community. While all of the services listed on the OTI goals for treatment provision are important aspects of complete care, they may not all be equally critical in all settings. We have excluded some services which are not as essential to certain program types as others.

3. Given the caveat specified above, there are a set of essential services—a "gold standard"— which all treatment providers can be judged against. These services represent the minimal definition of an adequate continuum of care according to OTI goals, and deviations from this minimum represent less comprehensive treatment provision.

4. Because the National Treatment Improvement Evaluation Study (NTIES) effort will require some data collection capabilities on the part of the participating SDUs, we have added to the definition of a "gold standard" the ability/plan to collect such patient and program process data.

5. Programs sampled for patient and program level data collection and for community impact data collection will overlap; that is, programs appropriate for the third component will in most cases be appropriate for the first two. As was discussed earlier, provider programs must be of sufficient size or scope to be expected to have a discernible impact on community indicators. However, small programs which meet the criteria of excellence in services may be important to include as sources for patient level and program process level data collection for other reasons—geographic differences, unique aspects of the target population, innovative programming. These factors will be included in the final site sampling.

Using the above assumptions as guides, a system of classifying SDUs into categories for sampling was developed. The goal of the exercise was to create categories which reflect the continuum of care or services provided in the grantees (the primary independent variable in the national outcome evaluations) as well as take into account breadth and representation of program type. This was not in any way intended to provide the framework for a probability sample. It is intended to provide descriptive guidance for site selection.

Within each of the final cells in the classification system, programs will be selected purposively by OTI staff on the basis of other criteria of interest, more detailed program capabilities and the cooperation/interest of individual SDUs. Final selection may also be determined through site visits by the contractor on the NTIES effort and OTI staff.

The following section describes the development of the final classification categories. Each step in the process builds upon the one before and was developed with review from OTI staff.

1.5.3 Classification Criteria

Data on SDUs from the Critical Populations and two Criminal Justice grant programs were used to create this classification system. It is anticipated that a similar sorting exercise will be conducted by the NTIES contractor with data on individual treatment providers within the eight Target Cities grants.

Classification criteria were established in conjunction with OTI staff to reflect program goals and objectives. The primary sorting criteria are:

- Comprehensiveness of treatment services
- Treatment modality
- Target populations served
- Scope/size

Comprehensiveness of treatment services is the primary interest and critical independent variable in the NTIES analysis; that is, does enhanced or optimal treatment produce significantly better outcome than more standard services? While it was originally thought that OTI programs could be matched to either approved but unfunded applications or comparison providers in each city, analysis of the approved but unfunded FY90 OTI grant applications, conducted as part of this task, indicated that there were not adequate comparison SDUs to make a quasiexperimental design feasible. In addition, we found that many SDUs operate in small towns or areas in which there is no comparable (or any) drug treatment facility. Consequently, the decision to look within grantees for variation on comprehensiveness of service delivery was made.

It is important to bear in mind that this system is based on what SDUs report rather than what has been/will be implemented. The classification system developed at this point gives us a mechanism for preliminary selection and a structure for final sampling.

The first step in creating the dimension of comprehensiveness of service delivery was the definition of comprehensive or essential service provision (supplied by OTI), and adjustment of those services where necessary for certain program types. First, a matrix of treatment modality by target population served was developed, and appropriate services for inclusion in each cell determined. Then a set of "universals" or basic services and optional service needs were defined. We identified six essential services as defined by OTI that should be provided regardless of the modality or target group: Assessment, case management, professional therapy, [3] health and drug education, aftercare and follow-up, and process and outcome evaluation protocols.[4] The list of optional services that are applicable depended on the treatment modality.

Essential Services

Four Critical Components:

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[3] By professional therapy we mean counseling provided by persons with recognized clinical credentials (psychiatrist, psychologist, social work) or certification in drug treatment counseling.

[4] The treatment literature is not definitive on what constitutes "essential" or "best" service provision. Many programs, for example, argue that ex-addict counselors with clinical supervision provide the most effective intervention. The list included here was developed from OTI's list of comprehensive services expected in their programs and in consultation with senior OTI staff.

Professional Therapy [5]
Case Management
Health & Drug Education
Aftercare
Two Additional Essential Services:
Assessment/diagnostics at Intake
Process & Outcome Protocols

Optional Services

AIDS Education
Child Care
Employment
Housing Assistance
Life Skills
Medical Care
Recreation
Same Day Intake
Support Groups
Transition Planning
Urinalysis

We originally conceived of the Gold Standard of comprehensiveness (or appropriateness) measure as being comprised of two components: The number of essential services provided and the number of optional additional services provided. Toward that end, we first computed the number of essential services for each provider. However, only seven programs reported all six essential services. Upon further investigation, we discovered that nearly all of the providers that offer five of the six essential services are not utilizing the assessment tools needed for treatment planning and the NTIES research. Most of those providers fail to use psychological testing or psychological histories in their intake assessments of clients.

While the essential service list defined the top tier of the Gold Standard of evaluability, we wanted to better differentiate among the remaining programs. Of particular interest were those forty SDUs that provided four of the six essential services, thereby falling just short of qualification for the top tier. We planned to use the optional service lists as the means for sorting those programs. Counts of optional services that were deemed applicable within each treatment modality were generated. Again, we found very little variation in these counts. That is, programs in a given modality report they do or will provide (before or under the enhancement) roughly the same high number of optional services.

As the optional services did not contain sufficient variability to differentiate among programs, we returned to the essential services. For those programs providing four of the six services essential to a continuum of care, we decided to examine which four services were provided. Just as assessment was the only difference between those providing five or all six essential services, many of the programs at the next level do provide all four essential direct services (professional therapy, case management, health and drug education, and aftercare). They are often only lacking on the process and outcome evaluation protocols. Therefore, those programs that provide all four essential services were placed in the next highest category on the Gold Standard measure of evaluability. The remaining programs, lacking one or more of the four essential direct services, are least appropriate for evaluation and thereby form the bottom tier on the Gold Standard measure.

For site selection purposes it was decided to collapse the top two categories, as these definition criteria are in practice quite close. Therefore, a dichotomized (rather than trichotomized) variable of "more comprehensive service provision" and "less comprehensive service provision" was defined.

In order to implement this design, we also had to devise mutually exclusive categories for treatment modality and target population served. The modality measure used the nine NDATUS categories, based on the primary treatment modality reported at baseline. These groups were collapsed to three categories in the final schema to produce larger numbers of SDUs in each cell. The target population measure was more involved. The primary data source was the program class code for Critical Populations (for minorities, publicly housed, adolescents, and "mixed") from the OTI data system. OTI originally identified three other target groups that might be of interest: Programs that target women, the homeless, or dually diagnosed patients. In computing the target measure, the OTI program class code variable took precedence with one exception: If the program reported serving women, that was the target group regardless of whether the program was located in public housing or served minority women. Final Target Population groupings were defined as Women, Adolescents, Criminal Justice Populations, and General Service Populations due to small numbers in other categorization schemes.

1.5.4 Sampling Limitations for Target Cities

Sampling treatment units (subgrantees) within the eight Target Cities involves several of the same issues as sampling within each of the three other OTI grant programs. Sampling must reflect purposive representation of treatment modality, target population served, scope, as well as provision of key elements from the continuum of care defined by OTI. There are several limitations to sampling SDUs within each of the eight Target City efforts, addressed in this section.

At the most general level, conceptual limitations exist with respect to treatment of Target City outcomes and effects which have implications for determination of an appropriate unit of analysis. The Target City intervention is best described as an intervention focused on how drug treatment is organized in a given city, and how a patient moves through that city's treatment system. Thus, the Target City effort is, at least in part, predicated on the notion that a patient may be involved with several treatment units within a geographically defined community in order to obtain comprehensive services along a service continuum. In addition, how that system functions in aggregate is a central focus of evaluation. However, the need to link provider data with patient outcome data implies that patient outcomes are analyzed relative to their providers.

Given the need to identify patients as involved with a unique provider, the key limitation for sampling SDUs within Target Cities is the lack of a stable database of SDUs. While each of the eight Target City efforts is underway in terms of constructing a management structure and intervention plan for their city effort, finalizing subcontracts and agreements with subgrantees remains outstanding.[6] Thus, descriptive information about SDUs is as yet unavailable for many of the Target Cities. An effective and efficient strategy for sampling within Target Cities thus becomes the utilization of an existing set of descriptive information about providers that is not dependent upon the development of the Target City efforts at this point, nor relies upon provider-level data. We suggest the sampling of providers within Target Cities using the National Drug Treatment Unit Survey (NDATUS) dataset from NIDA. Stable data in uniform format are collected by NIDA in ongoing fashion. The NDATUS dataset provides descriptive information about provider characteristics germane to this effort, including but not limited to:

[5] The only exception to this criteria is for the Long-Term Residential Modality. Since many TCs operate by philosophy without professional therapists, we allowed this service to be excluded for them.

[6] This information is based on a review of quarterly reports of Target City grantees from February and March of 1991.

- Patient sociodemographic characteristics;
- Treatment modality;
- Treatment setting;
- Services;
- Staff characteristics;
- Drugs of abuse (vis-a-vis treatment services);
- Capacity of treatment unit

For the purposes of this evaluation, the contractor should work with NIDA and OTI to obtain an NDATUS data file of the treatment units in each Target City effort and, using the substantive sampling frames developed and presented within this Appendix, sample from within each Target City. Although the number and listing of SDUs in the eight cities is not yet finalized, preliminary estimates of the number of SDUs involved within the Target Cities total at minimum 230. However, these arrangements may have changed as they were taken from estimates presented within applications for funding.

1.6 Site Selection Frames

Tables 1–4 at the end of Section II represent the completed site selection frames for each of the Target Populations identified in cooperation with OTI staff as critical for representation. Criminal justice programs are those SDUs in the two criminal justice setting grant programs. They are collapsed into one column since the number of funded SDUs in these grant programs is small. The General Service Population category includes a large number of providers whose patient population is mixed or presents primarily racial and ethnic minorities as their target group. In addition, we have folded into this category special target groups such as the homeless, residents of housing projects and the dually diagnosed.

Small numbers of providers in these categories makes it impossible to use them as sampling criteria.

This analysis uses modality and comprehensiveness of care as the cross tabulation criteria for each of the target populations, producing four site selection frames. It is important to bear in mind that these tables reflect SDUs in the Critical Populations, Correctional Settings, and Non-Incarcerated Offenders Programs, not Target Cities where there are potentially two to three times as many SDUs.

Classification criteria are categories representing broad treatment modalities (column headings) and comprehensive service provision (row headings). Again, finer distinctions (the NDATUS classification system) available on the dataset for each provider had to be collapsed in creation of the typology to produce cell sizes adequate for site selection.

Providers or SDUs are listed on each table by grant name to give some sense of the types of services contained within each cell. We have also indicated the reported point-in-time patient capacity of each provider to indicate size of the patient population. This variable can be used for final selection of providers for the community impacts portion of NTIES; that is, the community impacts evaluation will choose those programs with the greatest scope for inclusion.

The site selection discussed below pertains to Level II and Level III data collection only. All SDUs are included at Level I. At Level II it is estimated that 150 SDUs, including those identified from the eight Target Cities SDU group, will be selected. At Level III it is estimated that of those 150 Level II SDUs, 50–80 SDUs will be selected (See Figure I at the end of section 1). The selection will be based on representation of provider type and target population served, as well as by either variation or matching on the critical independent variable, comprehensiveness of service provision.

We recommend that site selection for Target Cities SDUs be considered separately and the numbers of providers taken into account when identifying providers in the other grant programs. Based on cost limitations, we suggest that each Target City sample of SDUs be sorted using the criteria outlined here with the goal of selecting approximately 10 SDUs per city or a total of 80 SDUs for the Level II analysis, and approximately 6 SDUs per city for total of 40 SDUs in Level III analysis.

While there are hundreds of SDUs in Target Cities and fewer than 100 in the other three grantee programs, a disproportionate representation of non-Target City grantees in the final numbers (N=70 for Level II analysis, and N=30 for Level III) has been suggested. This would bring the final Level II total to 150 and the Level III total to 70 programs, distributed across all four grant program efforts and allocated by a classification system designed to reach a range of program modalities and target populations. Final site selection will be made by OTI. Further, since a number of Non-Target Cities grantees are located within Target Cities, the number of distinct geographic sites where patient follow-up and community impacts may need to be conducted will in all likelihood be significantly smaller than the number of SDU's selected for Level II or III analysis.

Regardless of the selection process for final choices, some providers may wish to be included because of special considerations. For example, the few SDUs dealing with dual diagnosis patients, Native American populations or the homeless may be selected for the special needs populations they serve.

2.0 Methods of Data Collection

This section describes methods and tools for data collection at each of the three evaluation levels proposed.

2.1 Data collection at Level I

At this first, lowest level, of evaluation intensity, patient outcomes to the degree that such data is available from all treatment providers funded by OTI (N=350–400) will be evaluated relative to contextual measures, or ecological characteristics, of their specific geographic communities (e.g., cities or counties). This contextual analysis will allow the national evaluator:

(1) To draw a clear picture of the multiple settings in which drug treatment operates, and

(2) To provide contextual data for the analysis of available patient outcomes.

Contextual analysis will enable OTI to describe all of its grantees in terms of comparable sociodemographic variables. Grantees can then be stratified along a continuum which represents multiple ecological factors, including: social organization; public health; social support; socioeconomic status, and so forth. Ecological factors, or contextual variables, can be transformed into weights to help explain and interpret patient outcome data during the evaluation's analysis phase. Community context analysis is predicated on the hypothesis that change, or impact, can be interpreted in a relative fashion. In a case of noncomparable interventions across disparate contexts—such as the OTI demonstrations—it is relative, rather than absolute impacts that are of interest. (In fact, the sampling frames developed for the national evaluation account for this design factor by stratifying providers along multiple dimensions.) At this level, contextual variables are not intended for use as dependent variables upon which one measures impact; one does not expect to see contextual variables change in a predicted direction or to attribute any observed change to OTI's intervention. At a minimum, however, contextual variables allow the national evaluator to categorize SDUs for analysis, and perhaps to model effects for types of community settings. For example, providers operating in severely disrupted settings may have less easily

detectable community impacts, given ancillary community problems and external confounding factors (e.g., a 10% effect in these areas may be comparable to a 30% effect in less problematic ones). Similarly, providers operating where treatment resources are already high may see depressed measures of impact relative to those observed from a comparable intervention where treatment resources are low.

To contextualize patient outcomes for all treatment units funded by OTI, the national evaluator will collect and analyze contextual variables about the community in which each treatment unit is located. Multiple measures need to be collected about each community to account for the complex interactions of community characteristics and OTI interventions. However, communities with multiple OTI-funded treatment units, such as the Target Cities, require collection and maintenance of only one set of contextual variables.

A frame or shell for collection of community-specific secondary data, the "Community Context File," is provided within this section. It is anticipated that the data points listed within this file will be abstracted from secondary data sources, according to predetermined protocols, and stored in an online database maintained by the national evaluator for easy analytic manipulation throughout the evaluation effort. Rates and proportions will be stratified for race and ethnicity, as appropriate. It is expected that during the implementation of the national evaluation, the evaluator will determine standard reporting periods for each of these data elements in order to identify variables with reporting periods too infrequent for the purposes of this project. Data collected and updated with less than annual frequency are probably not adequately sensitive indicators of contextual change.

Limitations to Level I Evaluation

There are two central limitations to Level I evaluation. First, Level I evaluation as described above requires integration and cooperation between patient outcomes and community impacts evaluation efforts. Clearly, contextual variables are not in and of themselves interesting with respect to the national evaluation, except as descriptions for each program. Rather, their utilization within the national evaluation relies on the provision of accurate, appropriate, and timely data on program operations and patient outcome data. While simultaneous data collection is required of both national evaluation teams (that is, community context data need to reflect the same time period as do the program and patient outcomes data), absolute integration of efforts is not necessary. In all likelihood there will be some acceptable and unavoidable time lag between availability of program, patient and community context data, but every effort must be made to ensure maximum cooperation.

Second, the community impacts evaluator will have to rely on secondary data sources for contextual variables. Data sources, such as city records, may differ across communities with respect to quality and currency; moreover, contextual variables themselves may differ from each other with respect to these factors regardless of their community of origin (e.g., labor economics data may be more accurate than health service utilization data). Evaluation and analysis will have to account for these inherent limitations through planning, specification of requisite data, and consistent definition of both terms and reporting periods.

2.2 Data Collection at Level II

At Level II, community is defined as the community of treatment providers in a city/county surrounding an OTI-funded treatment unit. Community Impacts Evaluation at Level II will: Describe the dynamics of the community of treatment providers surrounding a demonstration effort; define how that network changes over the course of the intervention; and, develop operative explanations or observed change. Evaluation will involve multiple measures over time, or time series analysis, and afford adequate controls with respect to data collection and analysis for cross-site comparisons. Thus, the objectives of Level II evaluation are:

(1) To determine the extent to which a network of treatment providers exists and develops over the course of an OTI intervention, and

(2) To assess how the OTI intervention affects of this network, recognizing the problems of attributing observed change in a non-experimental evaluation environment.

By "network" we mean an informally, rather than a formally, defined body of treatment units which share not only a physical setting and its contextual variables (geographically defined community), but patients, resources, policy and service concerns, as well as service objectives. Thus, treatment units within a network may refer patients to each others' services, share staff resources, participate in joint training, develop shared or complementary treatment protocols and standards of care. Beneficiaries of a developing treatment network may be some combination of staff, patients, and community members.

Network activities may or may not change in scope and intensity throughout the OTI demonstration effort. Primary changes, however, are hypothesized to be associated with increased collaboration or coordination between service units. The extent to which the service structure is more clearly developed, utilized, and accepted from one data collection point to the next, indicates impact on the community of providers. In looking at these changes, the research will emphasize structure and practice as well as knowledge and attitudes.

The primary vehicle for data collection at Level II is the site visit, which includes multiple methods of data collection: Structured interviews, focus groups, participant observation, as well as eventual secondary data analysis of the national evaluation's patient outcome and process (patient participation) data. Several data collection steps are proposed within the site visit:

(1) Review existing materials (e.g., provider-specific information from the OTI–MIS, quarterly reports, patient outcome and process data);

(2) Validate, and review secondary data, and collect additional information through structured interviews with the project director, the clinical supervisor, and other relevant staff;

(3) Conduct focus groups among a cross-section of direct service staff from the OTI-enhanced provider;

(4) Conduct structured interviews with service providers within the demonstration efforts' treatment network, and with a cross-section of community leaders or key informants;

(5) Conduct participant observation exercises targeting the enhanced provider, its surroundings, service provision and staff.

The evaluative materials developed to ensure that fieldworkers obtain comparable information within and across sites follow.

Limitations to Level II Data Collection

Data collection at Level II presents two primary limitations or constraints. First, given the lack of an adequately controlled evaluation environment (i.e., an experimental design) the national evaluator faces constraints with respect to attributing change to any specific causal factor(s). Rather, the evaluator can only make descriptive statements with respect to observed change and potential mechanisms of change. The

confidence with which the evaluator makes these statements is strengthened through the use of time series analysis (multiple measures over time), collection of contextual variables that may contribute to change (i.e., Level I analysis), and utilization of multiple measures and methods of investigation (e.g., triangulation of interviews, focus groups, structured observation, and secondary data review). With respect to attributing change, the investigator faces a secondary constraint of isolating the intervention. Demonstration interventions are defined by efforts to assuage gaps in service delivery; thus, a given grantee may benefit from multiple foci of an intervention. As a result, the evaluator must clearly define the intervention. Much of this definitional work has been accomplished through preliminary activities of Abt Associates and its descriptive analysis of OTI grantees. Formative analyses of this type will need, however, to be updated with respect to operative validity. That is, grantees will have to be assessed with respect to what they are doino. in addition to what they orooosed to do.

Because Level II evaluation assesses change among a community of providers, however, analytic "noise" derives not just from the multiple activities of a given OTI grant, but from multiple efforts of grant agencies within a community. Other federal and local agencies may undertake treatment enhancement activities in the same communities as is OTI, the effects of which could confound descriptive findings of network change. Thus, baseline and follow-up assessments within communities must monitor the sum total of demonstration efforts within a community, as well as the net effects of the OTI effort. Such monitoring will allow the national evaluator to investigate the marginal impact of the OTI demonstration on a community of treatment providers, recognizing simultaneous effects of other treatment enhancement activities.

The last constraint or limitation Level II evaluation presents is one of appropriately integrating the community impacts evaluation with the patient and process evaluation. The above roster of data collection activities will be somewhat redundant to components of the patient and process effort (i.e, interviewing the project director). It is strongly recommended, therefore, that the evaluation teams undertaking each effort cooperate with each other during the planning stage, through implementation, to reduce redundancy of data collection, and to minimize any unnecessary burden on provider staff.

2.3 Data Collection at Level III

At this third level of evaluation, the most intense and the most extensive with respect to data collection,[7] community is defined as a geographic area and its residents. The objective of Level III evaluation is to investigate the impacts of the OTI intervention, and the enhanced drug treatment system, on the "community-at-large." This implies that varied effects may be observed over time among residents of areas surrounding the enhanced provider, effects such as changed attitudes toward drug treatment, altered perceptions of crime, and changed perceived value of the treatment system in terms of its efficacy and importance.

While these are broad and diffuse effects, it is important to remember that providers and areas sampled into Level III evaluation will be purposely chosen because their scope and activities make it feasible to expect community-wide outcomes. Providers participating within the Target Cities grant program, for example, may generate enough community-wide impact to affect community-wide perceptions. Therefore, in parallel to Level II which hypothesizes some effect among the community of treatment providers for provider-level interventions, Level III hypothesizes effects among the community-at-large for community-wide interventions.

There are two primary mechanisms for data collection within Level III. The first is an analysis of secondary data, quite similar to that described in the discussion of Level I community context data, analyzed in this instance as outcome measures. Social indicators, of appropriate scale and proportion, such as local area crime rates or drug-related health indicators, will be collected and analyzed for communities sampled into Level III. How these indicators change over the course of the OTI demonstration efforts will provide partial information about community-wide effects of OTI demonstrations.

Whereas secondary data is used within Level I to help describe the context of the demonstration efforts, at Level III indicators will be used as outcome measures for a sample of communities. Such an analysis is not without limitations. These limitations are briefly described in the following section, and have been more amply described both in the Background section of this appendix.

[7] A reminder to the reader that data collection is cumulative through levels such that providers sampled for Level III investigation will have been investigated at levels I and II.

The second mechanism for data collection within Level III is the random telephone survey. Because we hypothesize some generalized effect among community members with respect to their knowledge, attitudes, and perceptions, we propose to evaluate this hypothesis through a survey of residents of sampled communities. Thus we have constructed a telephone survey which assesses: attitudes toward drug use, crime, and victimization, as well as attitudes toward and familiarity with the drug treatment and related social service systems.

Many items on this survey have been borrowed or developed from large national opinion telephone surveys (noted on the instrument) which elicit similar information from a national sample. Many items are new and reflect issues germane to the OTI mandate.

Within this telephone survey, a subset of items have been identified with an asterisk (*). These items comprise a shortened assessment appropriate for use within a prison or jail. The NTIES implementation contractor(s) will conduct an opinion assessment among a probability sample of individuals residing in a prison or jail where one of the OTI treatment improvement demonstrations is being conducted. In this instance, the controlled environment of the prison or jail constitutes the "community" appropriate for evaluation. The wording of many of these items will have to be adapted to reflect the prison or jail environment.

Limitations to Data Collection at Level III

As with data collection within the other two levels, data collection at Level III presents several analytic and logistical challenges. First, any analysis of secondary data sources as outcome measures presents the problems of attribution discussed throughout this document. Since this problem has been raised as a limitation several times, only brief attention will be paid to it here. In sum, cautious use must be made of secondary data as outcome measures in a non-experimental condition, one with significant background noise and potential for confounding. By taking measures within small areas, repeatedly, and triangulating with other data, secondary data analysis used in this fashion provides some utility.

Second, with respect to the use of the telephone survey, it must be emphasized that a central assumption to this effort is that effects will spread and be realized throughout a community; that is, community residents not necessarily affiliated with the treatment system will

experience resultant impacts. Moreover, these impacts will be measurable. Careful purposeful sampling for providers (and thus communities) for Level III investigation increases the fit between intervention and measurement. Large, system-modification efforts such as the Target Cities, or demonstrations within closed communities sensitive to change (e.g., prisons) will be identified during the sampling as appropriate for Level III investigation.

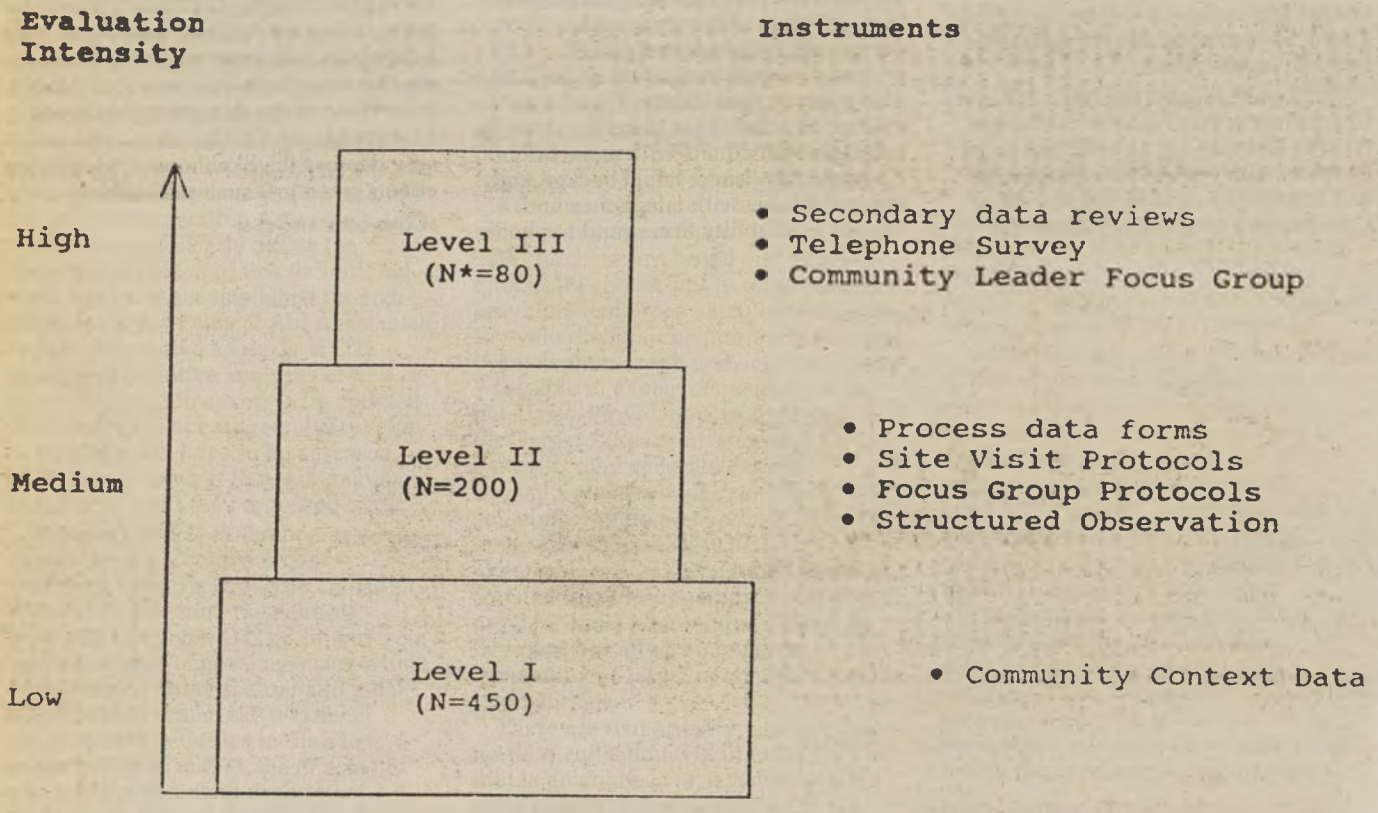
Third, with respect to logistics, Level III presents several unique challenges. As was discussed at Level I, care must be taken with respect to collection, use, and interpretation of secondary data. Communities may employ disparate standards, methods, definitions, and reporting periods for data collection. Careful quality control procedures, as well as foresight and planning are required for maximal use of secondary data.

Additionally, it is worth noting that data collection through telephone survey presents not just logistical challenges (e.g., training, consistency and comparability, random dialing procedures, communication skills), but also analytic constraints. There is an evident selection bias in such a strategy such that individuals with more stable, economically "successful" backgrounds are individuals with telephones and time or availability to respond to phone inquiries. This means that the population selected for the telephone sample may be comprised of populations with least proximity to the OTI-funded provider and its provider network. On the one hand, such selection bias may increase the confidence with which we interpret findings of positive community effect: in order to register impact, individuals with lesser proximity may require impacts of greater magnitude than may individuals quite close to the demonstration (such as its patients). On the other hand, we may depress the likelihood of identifying effects given just such selection.

BILLING CODE 4160-20-M

Figure 1

Community Impacts Evaluation



* N = number of service delivery units (SDUs)

TABLE 1.—SITE SELECTION FRAME FOR SDUS SERVING GENERAL SERVICES POPULATIONS[1]

[N–42 SDUs]

	Short-term residential	Yearly capacity	Long-term residential	Yearly capacity	Outpatient drug free	Yearly capacity	Outpatient methadone	Yearly capacity
More Comprehensive Service Provision (N–23 SDUs)	Project Respect	39	Apple Treatment Improvement Project.	366	Treatment Services for Dual Diagnosed Alaskan Natives.	334	Family Health in Methadone Maintenance Program.	3200
	Comprehensive Minorities Outreach and Recreational Support.	415	Comprehensive Drug Treatment for Ethnic Minorities.	98	Homeless dually diagnosed project.	115	Medically Oriented Case Management in IVDUs.	2499
	Treatment Enhancement of Hispanic Adults and Adolescents.	495	Treatment Improvement Services.	160	Enhancement and development of Ethnic Comp. for Blacks and Hispanics.	186	Model Comprehensive Treatment Program for Critical Populations.	485
	Improved Services for Minority Homeless.	250	Pre-admission Drug Addiction Health Treatment Center.	55	Drug Abuse Treatment for Minorities within Target Areas.	140	Take Back Our Community.	*327
					Improving Drug Treatment for Latino Users.	14		
					Oakland Community Counseling Drug Improvement Project.	123		
					Outpatient Drug Treatment for Racial and Ethnic Minorities.	50		
					Enhancement of Outpatient and Intensive Outpatient Drug Treatment.	141		
					Enhanced Alcohol and Drug Treatment to Meet Cultural Needs of Hispanics.	850		
					Drug Abuse/AIDS Health Service Program.	500		
					Maehnowese Kiyah Treatment Improvement.	121		
Less Comprehensive Service Provision (N=19 SDUs)	Virgin Islands Critical Population Program.	200	Comprehensive Treatment Services for Minorities.	465	Project Success	1450	Treatment Resource Program for MICA and Dual Drug Patients.	(2)
			Enhanced Treatment for Women and Children.	55	Outpatient Drug Abuse Services in Public Nursing.	140	Oakland Comprehensive Drug Treatment Project.	970
			Asian Comprehensive Cultural Enhancement Project.	(2)	Treatment Improvement Demonstration Project.	164	Improved Case Management Services for HIV + and minorities.	390
			Beef Up	59	La Lucha Collaboration.	495	Community Liaison Outreach Services Enhancement.	450
					Enhancement of Existing Drug and Alcohol Treatment Program.	259	Treatment Outreach Project.	399

TABLE 1.—SITE SELECTION FRAME FOR SDUs SERVING GENERAL SERVICES POPULATIONS[1]—Continued

[N=42 SDUs]

	Short-term residential	Yearly capacity	Long-term residential	Yearly capacity	Outpatient drug free	Yearly capacity	Outpatient methadone	Yearly capacity
					Comprehensive Treatment for Mentally Ill Chemically Abusing Minorities.	1270		
					Treatment Improvement Grant.	100		
					VGS Treatment Improvement Grant.	940		
					Oneida Drug Abuse Treatment Improvement Project.	166		

[1] No single dominant target group.
[2] Missing data.

TABLE 2.—SITE SELECTION FRAME FOR SDUs TARGETING WOMEN [1]

[N=8 SDUs]

	Short-term residential	Yearly capacity	Long-term residential	Yearly capacity	Outpatient drug free	Yearly capacity	Outpatient methadone
More Comprehensive Service Provision (N=6 SDUs)	Model Treatment Program for Women and Their Children.	30	Model Comprehensive Treatment Program.	21	Neighbor to Neighbor: The Decatur Model.	100	
			Model Comprehensive Treatment Program for Women Addicts.	105	Sister	119	
					Treatment Improvement for at-risk and pregnant substance abusing women.	(2)	
Less Comprehensive Service Provision (N=2 SDUs)					Crisis Intervention Relapse Program for Women and Children.	(2)	
					Specialized Recovery Services for Women of Color.	(2)	

[1] Defined as serving over 75% women or class code indicating a program for women.
[2] Missing data.

TABLE 3.—SITE SELECTION FRAME FOR SDUs IN CRIMINAL JUSTICE SETTINGS [1]

[N=19 SDUs]

	Short-term residential	Yearly capacity	Long-term residential	Yearly capacity	Outpatient drug free	Yearly capacity	Outpatient Methadone	Yearly capacity
More Comprehensive Service Provision (N=10 SDUs)	Treatment Improvement for Incarcerated Juvenile Populations.	220	Camp Services for non-carcerated offenders.	349	Integrated Juvenile Justice Treatment Project.	1050	Youthful Addicted Offender Diversion.	(2)
	Residential substance abuse program for incarcerated women.	423	Comprehensive Treatment and Aftercare Project.	135	Comprehensive Program Serving High Risk Parolees.	174		
	JAS in Montgomery County.	49	Cook County Jail SATC Project.	117	Stay in Straight Day Treatment Center.	30		

TABLE 3.—SITE SELECTION FRAME FOR SDUs IN CRIMINAL JUSTICE SETTINGS [1]—Continued

[N-19 SDUs]

	Short-term residential	Yearly capacity	Long-term residential	Yearly capacity	Outpatient drug free	Yearly capacity	Outpatient Methadone	Yearly capacity
Less Comprehensive Service Provision (N=9 SDUs)	Ventress Drug Treatment Program in Prison.	1000	Intensive Substance Abuse Program.	1050	Youthful Offender Addiction Intervention Project.	289	Non-Incarcerated Drug Offender Enhanced Treatment Project.	460
	Enhanced Intensive Drug Treatment Program.	1105	Comprehensive Treatment Services for NJ Youth.	145	Intensive Family Day Treatment Addiction Program.	180	Model Treatment for Non-Incarcerated Offenders.	949
					Parole & Probation Resource Center.	80		

[1] Defined as SDUs participating in the Non-Incarcerated Offender or Correctional Setting Grant Program.
[2] Missing data.

TABLE 4.—SITE SELECTION FRAME FOR SDUs TARGETING ADOLESCENTS [1]

[N=28 SDUs]

	Short-term residential	Yearly capacity	Long-term residential	Yearly capacity	Outpatient drug free	Yearly capacity	Outpatient methadone
More Comprehensive Service Provision (N=15 SDUs)	Boston Drug Treatment Improvement Program.	38	Supported Transitional Homes Project.	38	After School Adolescent Program.	8	
	Koinonia Residential Drug Treatment Improvement Project.	21	Walden House Adolescent Re-entry and Aftercare Project.	72	Model Comprehensive Program for Critical Populations.	(2)	
			Treatment Program for Hispanic Youth Substance Abusers.	160	Long-Term Follow-Up Care.	32	
					YMCAP	520	
					Comprehensive Residential and Aftercare Treatment for Rural Adolescents.	111	
					Comprehensive Model Adolescent Outpatient Treatment.	110	
					Youth Specific Alcohol and Drug Counseling for Rural S.E.OK.	205	
					Adolescent Delinquent Treatment Need.	20	
					Treatment Improvement for Homeless Minority Youth in D.C.	350	
					Comprehensive Treatment for Ethnic Minority Youth.	120	
Less Comprehensive Service Provision (N=13 SDUs)	Model Chemical Dependency Treatment Program for Deaf/Hearing Impaired Adolescents and Adults.	40	Project Self-Reliance	36	Adolescent Intensive Substance Abuse Outpatient Services.	900	
	Native American Family Outreach for Addicted Adolescents.	47	Residential Adolescent Drug Treatment for Minorities.	20	La Familia Community Based Treatment Project.	150	
					Rural Adolescent Treatment Improvement Project.	64	
					Young Adult Transitional Living Facility.	242	

TABLE 4.—SITE SELECTION FRAME FOR SDUS TARGETING ADOLESCENTS [1]—Continued

[N=28 SDUs]

	Short-term residential	Yearly capacity	Long-term residential	Yearly capacity	Outpatient drug free	Yearly capacity	Outpatient methadone
					Comprehensive Program for Dually Diagnosed Adolescents.	316	
					Comprehensive Chemical Dependency Outpatient Treatment.	400	
					Rural Comprehensive Services for Adolescents.	15	
					YSP's Substance Abuse Program.	112	
					Improvement to Adolescent Recovery.	70	

[1] Defined as serving over 75% adolescents or class code definition of an adolescent program.
[2] Missing data.

Dated: June 27, 1991.

Beny J. Primm,

Associate Administrator for Treatment Improvement.

[FR Doc. 91-15951 Filed 7-11-91; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 90F-0248]

The Dow Chemical Co.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 0A4214) proposing that the food additive regulations be amended to provide for the safe use of acetate as replacement ion for ion exchange resins in the purification of coffee.

FOR FURTHER INFORMATION CONTACT: Rosalie M. Angeles, Center for Food Safety and Applied Nutrition (HFF-344), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 14, 1990 (55 FR 33173), FDA published a notice that it had filed a petition (FAP 0A4214) from The Dow Chemical Co., 1803 Bldg., Door 7, Midland, MI 48674, that proposed to amend the food additive regulations to provide for the safe use of acetate as a replacement ion for ion exchange resins in the purification of coffee. The Dow Chemical Co. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: June 21, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-16595 Filed 7-11-91; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committee; Agenda Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the agenda of a meeting of the General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee which is scheduled for July 31, 1991. This meeting was announced in the **Federal Register** of July 3, 1991 (56 FR 30590). There are no other changes. The date, times, and place of the meeting remain the same as announced in the July 3, 1991 **Federal Register**. This amendment will be announced at the beginning of the open portion of the meeting. This action is being taken to clarify the actual issues to be discussed at the meeting.

FOR FURTHER INFORMATION CONTACT: Paul F. Tilton, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1090.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 3, 1991, FDA announced that a meeting of the General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee would be held on July 31, 1991. On page 30591, column 1, the agenda for this meeting is amended as follows:

Open Committee Discussion

The committee will discuss FDA's risk assessment of TDA (2,4-toluene diamine) from polyurethane-covered beast prostheses, and the science necessary to further assess the clinical implications of TDA in women who have these implants.

Closed Presentation of Data

The committee will discuss trade secret and/or confidential commercial information regarding the above subjects. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552(c)(4)).

Closed Committee Deliberations

The committee will discuss trade secret and/or confidential commercial information regarding the above subjects. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552(c)(4)).

Dated: July 8, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-16597 Filed 7-11-91; 8:45 am]

BILLING CODE 4160-01-M

The Prescription Drug Marketing Act of 1987; Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is holding the fourth and fifth meetings on the Prescription Drug Marketing Act of 1987 (PDMA). The meetings are intended to inform regulated industry, State officials, health

professionals, and other interested persons of PDMA's requirements, the agency's enforcement policies relating to the act, and wholesaler guideline regulations. The sixth meeting will be announced in a future issue of the **Federal Register**.

DATES: The meetings will be held between 9 a.m. and 5 p.m. on Tuesday, July 23, 1991; and Thursday, October 3, 1991. Registration will be held between 8 a.m. and 9 a.m. of each meeting day.

ADDRESSES: On July 23, 1991, the meeting will be held at the Sir Francis Drake Hotel, Powell and Sutter Sts., San Francisco, CA; and on October 3, 1991, at the Ramada Renaissance Hotel, Atlanta Airport, 4736 Best Rd., College Park, GA.

FOR FURTHER INFORMATION CONTACT: Jeanne White, Office of Small Business, Scientific, and Trade Affairs (HF–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6776.

SUPPLEMENTARY INFORMATION: FDA has organized six educational meetings, to be held across the country in six separate locations, to discuss the requirements of PDMA, the agency's enforcement policies relating to PDMA, and the wholesaler guideline regulations. The meetings were organized by FDA's Office of Small Business, Scientific, and Trade Affairs, Center for Drug Evaluation and Research's Office of Compliance, and the Office of Regulatory Affairs, encompassing the Regional offices. The agency announced the first three meetings in the **Federal Register** of May 17, 1991 (56 FR 22876). This notice announces the fourth and fifth meetings; the sixth meeting will be announced in a future issue of the **Federal Register**.

PDMA (Pub. L. 100–293) was signed into law by the President on April 22, 1988. This act amended the Federal Food, Drug, and Cosmetic Act to: (1) Require State licensing of wholesale drug distributors under Federal guidelines that include minimum standards for storage, handling, and recordkeeping; (2) ban the reimportation of prescription drugs for human use produced in the United States, except when reimported by the manufacturer or for emergency use; (3) ban the sale, trade, or purchase of drug samples; (4) ban trafficking in or counterfeiting of drug coupons; (5) mandate storage, handling, and recordkeeping requirements for drug samples; (6) require practitioners to request drug samples in writing; (7) prohibit with certain exceptions the resale of prescription drugs purchased by hospitals or health care entities, or donated to or acquired at reduced cost by charitable institutions; and (8) set forth criminal and civil penalties for violations of these provisions.

In the **Federal Register** of September 14, 1990 (55 FR 38012), FDA issued guidelines for State licensing of wholesale prescription drug distributors as a final rule. The guidelines prescribe minimum standards, terms, and conditions for the storage and handling of prescription drugs for human use and for the establishment and maintenance of records of their distribution. These guidelines will become effective September 15, 1992.

The topics for discussion at the meetings are PDMA's requirements, the agency's enforcement policies relating to PDMA, and wholesaler guideline regulations. There will be two question and answer sessions at each meeting, one in the morning and one in the afternoon.

Dated: July 8, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91–16593 Filed 7–11–91; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 91N–0257]

Public Hearing: Section 16 of the Safe Medical Devices Act of 1990; Product Jurisdiction; Combination Products Comprised of a Drug, Device, or Biological Product

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a public hearing will be held to discuss implementation of section 16 of the Safe Medical Devices Act of 1990 regarding jurisdictional issues for combination products comprised of a drug, device, or biological product. Preregistration is advised to ensure participation. The procedures governing the hearing are found in 21 CFR part 15.

DATES: Participant and observer registration by August 8, 1991. The public hearing will be held on Friday, September 6, 1991, 9 a.m. to 5 p.m. Written comments by September 13, 1991.

ADDRESSES: The public hearing will be held in the Washington, DC area. The location for the public hearing will be determined after it is known how many persons will be participating and will be announced in a future **Federal Register** notice. Written comments (in lieu of an oral presentation) may be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Edwin V. Dutra, Jr., Office of the Commissioner (HF–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1306.

SUPPLEMENTARY INFORMATION: On November 28, 1990, the Safe Medical Devices Act became law (Pub. L. 101–629). Section 16 of this new law amended the Federal Food, Drug, and Cosmetic Act by adding section 503(f) (21 U.S.C. 353(f)) to require the designation of a lead component within FDA to regulate products that constitute a combination of a drug, device, or biological product. The designation is to be based upon FDA's determination of the "primary mode of action" of the combination product in question. Thus, if the agency determines that the primary mode of action of a covered combination product is a drug, the agency component charged with premarket review of drugs would have primary jurisdiction; if the primary mode of action is a device, the agency component charged with premarket review of devices would have primary jurisdiction; and if the primary mode of action is a biological product, FDA's biological product review component would have jurisdiction.

The new law requires FDA to issue regulations implementing section 16 by November 29, 1991. The Commissioner has directed the FDA Ombudsman to coordinate the development of these regulations, and the Ombudsman will chair the public hearing.

FDA intends to issue final procedural regulations on these matters by November 29, 1991. Before doing so, however, the agency wants to give all interested persons the opportunity to provide comments and suggestions about the content and scope of the procedural regulation.

Attendance and Participation

Every effort will be made to accommodate each person who wants to participate in the public hearing. However, each person who wants to ensure his or her participation in the hearing is encouraged, by close of business on August 8, 1991, to: (1) File a written notice of participation containing the name, address, phone number, facsimile number, affiliation, if any, of the participant, topic of the presentation, and approximate amount of time requested for the presentation; and (2) submit a brief description or

outline of their presentation so that the chairperson and any others who may serve on a panel conducting the workshop may formulate useful questions.

Interested persons who will not make a presentation but who will attend the public hearing are encouraged to notify the agency to facilitate adequate planning.

The requested information, including the written notice of participation, may be submitted to the contact person (address above).

By August 26, 1991, the amount of time assigned to each person and the approximate time his or her presentation is scheduled to begin will be determined. A hearing schedule showing the persons making presentations will be filed with the Dockets Management Branch (address above) and mailed or FAX'ed to each participant before the hearing. Interested persons attending the hearing who did not request an opportunity to make a presentation will be given the opportunity to make an oral presentation at the conclusion of the workshop, as time permits and at the discretion of the chairperson.

Interested persons may submit written comments (in lieu of making a presentation) to the Dockets Management Branch (address above). The agency will consider these comments in drafting the regulation. However, the agency does not intend to respond or summarize the comments received. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and should be submitted by September 13, 1991. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The hearing is informal, and the rules of evidence do not apply. No participant may interrupt the presentation of another participant. Only the presiding officer or others who may appear on the panel may question any person during or at the conclusion of their presentation. The hearing will be transcribed.

Dated: July 8, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91–16594 Filed 7–11–91; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

[BPO–98–GN]

Medicare Program; Medicare Secondary Payer Data Match

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice provides employers with information about the Medicare Secondary Payer (MSP) Data Match Program that involves HCFA, the Internal Revenue Service, and the Social Security Administration. The Data Match was provided for by Section 6202 of the Omnibus Budget Reconciliation Act of 1989. Under this provison, employers who receive data match questionnaires from HCFA for those employees who are Medicare beneficiaries or the spouse of a Medicare beneficiary must report certain health plan coverage information. The information will be used to determine whether Medicare payments for these beneficiaries should be or should have been primary or secondary to any payment that should be or should have been made by an employer group health plan (GHP).

DATES: Questionnaires described in this notice have begun to be sent to employers beginning March 1, 1991.

FOR FURTHER INFORMATION, CONTACT: George Mills, (301) 966–7430.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1862(b) of the Social Security Act (the Act) and our regulations at 42 CFR part 411 make Medicare the secondary payer on medical claims for its beneficiaries when the services may be paid for by certain third party payers, which include workers' compensation, no-fault insurance, liability insurance, and certain group health plans (GHP). Despite regulations and instructions that have been published, many claims for which GHPs are primary and Medicare is the secondary payer are not identified. Medicare in these cases has mistakenly made primary payments for the medical items or services.

In order to help identify Medicare Secondary Payer (MSP) situations, the Social Security Administration (SSA), the Internal Revenue Service (IRS), the HCFA have begun exchanging and comparing information on approximately 37,000,000 Medicare beneficiaries. This information exchange and comparison, required under the Omnibus Budget Reconciliation Act of 1989 (OBRA '89) which amended section 1862(b)(5) of the Act, is known as the Medicare Secondary Payer Data Match Program. The purpose of this program is to identify potential situations where certain MSP provisions may be applicable and, thus, prevent mistaken primary payments from the Medicare Trust Fund when a third party obligated to make primary payment exists, and to recover any mistaken primary payments made by Medicare.

Section 6202(a)(1) of OBRA '89, Public Law 101–239, added a new paragraph to section 6103(1) of the Internal Revenue Code to authorize disclosure of information from the master tax-records of IRS to SSA. Section 6202(a)(2) added a new paragraph (5) to section 1862(b) of the Act to authorize SSA to supplement the IRS information with material retained by SSA regarding earnings and identification of employers, and to send the information to HCFA.

In general, upon a written request from SSA, the IRS will access its master files and determine whether any Medicare beneficiary identified by SSA is identified as married in the IRS records. For those identified as married, the IRS provides the name and social security number of the spouse. SSA then determines if wages were reported under either the beneficiary's or the spouse's social security number by an employer who filed twenty or more W–2 forms in the tax year.

The information that SSA sends to HCFA under the Data Match Program consists of the following:

- The name, Medicare entitlement information (entitlement dates for parts A and B and the reason entitled) and social security number of each Medicare beneficiary who is identified by the Data Match as having received wages from an employer in a previous year;
- The name, Medicare entitlement information (entitlement dates for parts A and B and the reason entitled) and social security number for each married beneficiary whose spouse is identified by the Data Match as having received wages from an employer in a previous year and the name and social security number of the spouse; and
- The name, address, and employer identification number for each identified employer who has employed a Medicare beneficiary or the spouse of a Medicare beneficiary and the number of individuals for which the employer filed a W–2 form for the year in question.

Section 1862(b)(5) of the Act provides that HCFA, through a contractor, will send questionnaries to the employers identified through the Data Match Program to obtain specific information about GHP coverage of identified employees and/or their spouses.

Employers (other than governmental entities) are subject to civil money penalties for failure to respond timely or for sending incorrect or incomplete information when either is done willfully or repeatedly. The use of questionnaires, the data requested, and employers' obligations are explained more fully below.

II. Employer Questionnaire

Mailing I—

Prior to receiving Data Match questionnaires on individual employees, each employer identified by the process described above will be sent an information package. One purpose of this information package is to offer employers a simple response form if they did not offer health plan during the period under inquiry, or did not have twenty or more employees. Employers without twenty or more employees are generally not subject to the Medicare secondary payer rules. The informational mailing also contains a toll-free number for employers to direct questions about the Data Match, and encourages employers who wish to report electronically to contact the designated contractor for the Data Match. Employers who are interested in reporting electronically may write to the following address: Data Match Project, P.O. Box 1811, New York, NY 10023–1479, 1–800–999–1118.

Any employer that has multiple Employer Identification Numbers (EINs) and would like all data sent to one central location for response may arrange for this. The request must be made in writing to the address shown above. Employers which make such requests should inform all entities that the request is being made.

Mailing II—

The contractor will mail an instruction booklet and a Data Match Questionnaire to all employees who have filed at least 20 W–2 forms in tax year 1987, 1988, or 1989, who have also employed at least one Medicare beneficiary or the spouse of a Medicare beneficiary, and who have not advised the contractor that they did not offer a group health plan. The information disclosed in the questionnaire is to be used to determine whether a Medicare beneficiary or his or her spouse may be or may have been covered under a GHP, and, if covered, the benefits that are or were covered under the plan.

The questionnaire will be customized to reflect the specific data we have for the employer who receives it and each identified employee. Each employer receiving a questionnaire is being provided information from the Data Match that includes the name and social security number of the employees identified in the Data Match. The Data Match questionnaire will request information on:

Employer Specific

- Whether a group health plan is or was offered to employees;
- Whether the employer has or had twenty or more full and/or part-time employees;
- Whether the employer has or had one hundred or more full and/or part-time employees;
- Whether the group health plan (if a group health plan is offered) is or was part of a multiple or multi-employer plan;
- Type of health plan (insurance, health maintenance organization, preferred provider organization, self-insured/self administered, etc.);
- Name and address of health plan(s).

Employee Specific

- Whether the identified individual was an employee;
- Dates of employment;
- Dates of health plan coverage;
- Group health plan coverage election (employee only, family, no coverage);
- Group identification number or code;
- Worker health plan policy identification number or code (if known).

Employers receiving the questionnaire will be asked to complete the requests as soon as possible. Section 1862(b)(5) of the Act requires that employers respond to the inquiry within 30 calendar days of the date of receipt. Employers (other than governmental entities) may be assessed a civil monetary penalty of up to $1,000 for each individual for which an inquiry concerning health coverage was made if the employer willfully or repeatedly fails to respond timely, or accurately. In addition, the assessment of a civil monetary penalty will not relieve the employer of the requirement to provide this information.

We recognize that meeting the 30-day time limit may be difficult for some employers. As a result, HCFA has established procedures that will enable it to work with employers to establish workable schedules for submitting the requested information. A 30-day extension may be obtained by calling the toll-free number (800–999–1118). Requests for additional extensions must be made in writing, and may be granted for periods longer than 30 days. Mail request to following address: Data Match Project, P.O. Box 1811, NY, NY 10023. The instruction booklet, which will accompany the employer questionnaire, will explain how to request additional extensions.

Questions about the data match project, the booklet or the questionnaire should be referred to the above toll-free number and address. Questions concerning this notice should be sent to: Health Care Financing Administration, Bureau of Program Operations, Division of Operational Initiatives, ME–368, Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Mailing I began on March 1, 1991. Mailing II began on June 14, 1991.

III. Paperwork Clearance

This information collection activity has been approved under the Paperwork Reduction Act under OMB Approval number 0938–0565. Public reporting burden for the collection of this information is estimated to average 3 hours per response. Based on new information responding to our initial notification and request for information, it appears this estimate may be low. The time necessary to collect the information is a function of several factors: Where and how the data is maintained; how many years of information is requested; the number of sources needed to collect all the information; and number of individuals involved in the validation of the information. It appears many companies do not maintain this information for themselves. It is also evident that many companies have changed insurers.

Information that would inform this reassessment would be welcomed. Consequently, we are reevaluating our estimate and believe that the average may fall in the range of 5–30 hours. HCFA will be resubmitting the information request to OMB for review in July and plans to reassess its estimates then.

(Catalog of Federal Domestic Assistance Program No. 93.773—Hospital Insurance; No. 93–774—Supplementary Medical Insurance)

Dated: May 13, 1991.

Gail R. Wilensky,

Administrator.

[FR Doc. 91–16534 Filed 7–11–91; 8:45 am]

BILLING CODE 4120–01–M

Health Resources and Services Administration

Program Announcement, Funding Priorities and Grant Orientation Conferences for the Health Careers Opportunity Program

The Health Resources and Services Administration (HRSA) announces that

applications for fiscal year (FY) 1992 Health Careers Opportunity Program (HCOP) grants are now being accepted under the authority of section 787 of the Public Health Service Act (the Act), as amended by Public Law 100–607, and as found in regulations at 42 CFR, part 57, subpart S.

Section 787 authorizes the Secretary to make grants to and enter into contracts with schools of allopathic medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, chiropractic and podiatric medicine, and public and nonprofit private schools which offer graduate programs in clinical psychology and other public or private nonprofit health or educational entities to carry out programs which assist individuals from disadvantaged backgrounds to enter and graduate from such schools. The assistance authorized by the section includes: recruitment, preliminary education, facilitating entry and retention in health and allied health professions schools, and counseling and advice on financial aid.

The Administration's FY 1992 budget request for this program is $26,260,000. Of this amount it is estimated that $5,400,000 will be used to support 38 competitive awards at an average of $143,000. Approximately $21,000,000 will be used to continue to support 141 multi-year projects approved in prior years. This program announcement is subject to reauthorization of this legislative authority and to the appropriation of funds. The issuance of this announcement is a contingency action to ensure that should funds become available, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. The period of Federal support will not exceed 3 years.

The statute requires that of the amounts appropriated for any fiscal year, 20 percent shall be obligated for stipends to disadvantaged individuals of exceptional financial need who are students at schools of allopathic medicine, osteopathic medicine, or dentistry; 10 percent shall be obligated to community-based programs; and 70 percent shall be obligated for grants or contracts to institutions of higher education. Not more than 5 percent of such funds may be obligated for grants and contracts having the primary purpose of informing individuals about the existence and general nature of health careers.

Health People 2000 Objectives

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The Health Careers Opportunity Program is related to the priority area of Education and Community-Based programs. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Sumary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between its training programs and U.S. Public Health Service programs which provide comprehensive primary care services to be underserved.

Definitions

As used in this notice:

Community-based Program means a program whose organizational headquarters is located in and which primarily serves: a Metropolitan Statistical Area, as designated by the Office of Management and Budget; a Bureau of Economic Analysis, U.S. Department of Commerce designated nonmetropolitan economic area; a county; or Indian tribe(s) as defined in 42 CFR 36.102(c), i.e., an Indian tribe, band, nation, rancheria, Pueblo, colony or community, including an Alaska Native Village or regional or village corporation.

Health Professions Schools means schools of allopathic medicine, dentistry, osteopathic medicine, pharmacy, optometry, podiatric medicine, veterinary medicine, public health, chiropractic, or graduate programs in clinical psychology and health administration, as defined in section 701(4) and as accredited in section 701(5) of the Act.

Individual from a Disadvantaged Background means an individual who: (a) Comes from an environment that has inhibited the individual from obtaining the knowledge, skills and abilities required to enroll in and graduate from a health professions school or from a program providing education or training in an allied health profession or (b) comes from a family with an annual income below a level based on low income thresholds according to family size, published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index and adjusted by the Secretary for use in all health professions programs, 42 CFR 57.1804(b)(2).

The following income figures determine what constitutes a low income family for purposes of these Health Careers Opportunity Program grants for FY 1992:

Size of parents' family [1]	Income level [2]
1	$8,800
2	11,400
3	13,500
4	17,300
5	20,400
6 or more	23,000

[1] Includes only dependents listed on Federal income tax forms.
[2] Adjusted gross income for calendar year 1990, rounded to $100.

This definition is subject to change in the next fiscal year after public comments are received on a new definition of "individuals from a disadvantaged background" that is being set forth in a separate notice.

Training Center for Allied Health Professions means a junior college, or college, or university, as defined in section 795 of the Public Health Service Act, which:

(a) Provides educational programs leading to an associate, baccalaureate, or higher degree needed to practice as one of the following:

Master's Degree
- Biostatistician
- Nutritionist
- Social Worker
- Speech Pathologist/Audiologist

Bachelor's Degree
- Biomedical Engineer
- Blood Bank Technologist
- Community Health Educator
- Corrective Therapist
- Cytogenetic Counselor
- Dental Hygienist
- Dietitian (Coordinated undergraduate program)
- Health Physicist
- Health Services Administrator
- Medical Illustrator
- Medical Records Administrator
- Medical Technologist
- Microbiology Technologist
- Occupational Therapist
- Physical Therapist
- Primary Care Physician Assistant
- Recreational Therapist
- Rehabilitation Counselor
- Sanitarian (Environmental Health)

Associate Degree
- Clinical Dietetic Technician
- Cytotechnologist
- Dental Assistant
- Dental Hygienist
- Dental Laboratory Technician
- EKG/EEG Technologist
- Medical Assistant
- Medical Laboratory Technician
- Medical Records Technician

Occupational Therapy Assistant
Ophthalmic Medical Assistant
Ophthalmic Technologist
Optometric Technician
Orthopedic Technologist
Physical Therapy Assistant
Radiologic Technologist
Respiratory Therapist
Sanitarian Technician
Surgical Technologist

(b) Provides training for no fewer than 20 persons in the substantive health portion, including clinical experience as required for employment, in three or more of the disciplines listed in paragraph (a) of this definition and has a minimum of six full-time students in that portion of each curriculum by October 15 of the fiscal year of application.

(c) Has a teaching hospital as part of the grantee institution or is affiliated with a teaching hospital by means of a formal written agreement. The term *teaching hospital* includes other settings which provide clinical or other health services if they fulfill the requirement for clinical experience specified in an allied health curriculum.

Review Criteria

The review of applications will take into consideration the following criteria:

(a) The degree to which the proposed project adequately provides for the requirements in the program regulations;

(b) The number and types of individuals who can be expected to benefit from the project;

(c) The administrative and management ability of the applicant to carry out the proposed project in a cost-effective manner;

(d) The adequacy of the staff and faculty;

(e) The soundness of the budget; and

(f) The potential of the project to continue without further support under this program.

In addition, the following mechanism may be applied in determining the funding of applications.

Funding priorities—favorable adjustment of aggregate review scores when applications meet specified objective criteria.

Statutory Funding Priorities

Public Law 100–607 requires the Secretary to give priority in funding to the following schools:

1. A school which previously received an HCOP grant and increased its first-year enrollment of individuals from disadvantaged backgrounds by at least 20 percent over that enrollment in the base year 1987 by the end of 3 years from the date of the award of the HCOP grant.

2. A school which had not previously received an HCOP grant that increased its first-year enrollment of individuals from disadvantaged backgrounds by at least 20 percent over that enrollment in the base year 1987, over any period of time.

Established Funding Priorities

The following funding priorities will govern the distribution of grant awards to approved HCOP grant applicants for FY 1992. These funding priorities were established in FY 1990 after public comment and the Administration is extending these priorities again in FY 1992:

1. A funding priority will be given to HCOP applications from health professions schools and from allied health training centers for baccalaureate or higher level programs in physical therapy, physician assisting, respiratory therapy, medical technology or occupational therapy that have a disadvantaged student enrollment of 35 percent or more; or can document (over the past 3-year period) a 20 percent increase in the number of first-year enrollees who are disadvantaged; or can document a 90 percent retention rate of disadvantaged students of the most recent graduating class.

2. A funding priority will be given to applicant educational institutions that can document that at least 60 percent of the disadvantaged prehealth professions students from their school who applied over the past 3 years to health or allied health professions schools were enrolled in such schools.

These funding priorities do not preclude funding of other eligible approved applications. Accordingly, entities which do not qualify for or elect to request consideration under the priorities are encouraged to submit applications.

The applicant must indicate on the upper right-hand corner of the face page of the application the funding priority in which the applicant wishes consideration. However, the final determination of the category of funding priority will be based on a staff assessment of the contents of the proposal. An applicant may apply for consideration under only one funding priority.

In addition, consideration will be given to an equitable geographic distribution of projects, including adequate representation of projects in rural and frontier areas, and the assurance that a combination of all funded projects represents a reasonable proportion of the health professions specified in the legislation.

Application Requests

Requests for grant application materials and questions regarding business management issues and grants policy should be directed to: Ms. Diane Murray (D18), Grants Management Specialist, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6857.

Completed applications should be returned to the Grants Management Officer at the above address.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

The application deadline date is November 1, 1991. Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date, or

(2) Postmarked on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

Grant Orientation Conference

Grant applications and program information for the Health Careers Opportunity Program also will be provided through three program technical assistance conferences. The conferences scheduled during September 1991 are for the benefit of potential applicants and current grantees.

The three conferences will be held as follows:

September 12–13, 1991, Atlanta, Georgia
Westin Peachtree Plaza, Peachtree at International Boulevard, Atlanta, Georgia 30303–9986, (404) 659–1400, (800) 228–3000

September 16–17, 1991, Portland, Oregon
The Portland Hilton, 921 SW. Sixth Avenue, Portland, Oregon 97204–1296, (503) 226–1611, (800) 345–6565

September 19–20, 1991, St. Louis, Missouri
Holiday Inn Downtown Convention Center, 811 North 9th Street, St.

Louis, Missouri 63101, (314) 421–4000, (800) 289–8338

Expenses incurred by the attendees will not be supported by the Federal Government.

Agenda items will include: Application preparation (competitive and noncompetitive); and grants management policies and procedures. Special attention will be given to the development of the three-page grant proposal summary, which is prepared by the applicant and is critical to the objective review process.

Participation in the technical assistance meetings does not assure approval and funding of prospective applications.

To obtain specific information regarding the conferences and programmatic aspects of this grant program, direct inquiries to: Ms. Cynthia Amis, Acting Chief, Program Coordination Branch, Division of Disadvantaged Assistance, Bureau of Health Professions, HRSA, Parklawn Building, room 8A–09, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–4493.

The Health Careers Opportunity Program is listed at 93.822 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: June 11, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91–16598 Filed 7–13–91; 8:45 am]

BILLING CODE 4160–15–M

Health Education Assistance Loan Program; "Maximum Interest Rates for Quarter Ending September 30, 1991"

Section 727 of the Public Health Service Act (42 U.S.C. 294) authorizes the Secretary of Health and Human Services to establish a Federal program of student loan insurance for graduate students in health professions schools.

Section 60.13(a)(4) of the program's implementing regulations (42 CFR part 60, previously 45 CFR part 126) provides that the Secretary will announce the interest rate in effect on a quarterly basis.

The Secretary announces that for the period ending September 30, 1991, three interest rates are in effect for loans excuted through the Health Education Assistance Loan (HEAL) program.

1. For loans made before January 27, 1981, the variable interest rate is 9⅜ percent. Using the regulatory formula (45 CFR 126.13(a)), in effect prior to January 27, 1981, the Secretary would normally compute the variable rate for this quarter by finding the sum of the fixed annual rate (7 percent) and a variable component calculated by subtracting 3.50 percent from the average bond equivalent rate of 91-day U.S. Treasury bills for the preceding calendar quarter (5.76 percent), and rounding the result (9.26 percent) upward to the nearest ⅛ percent (9⅜ percent).

However, the regulatory formula also provides that the annual rate of the variable interest rate for a 3-month period shall be reduced to the highest one-eighth of 1 percent which would result in an average annual rate not in excess of 12 percent for the 12-month period concluded by those 3 months. Because the average rate of the 4 quarters ending September 30, 1991, is not in excess of 12 percent, there is no necessity for reducing the interest rate. For the previous 3 quarters the variable interest at the annual rate was as follows: 11¼ percent for the quarter ending December 31, 1990; 10¾ percent for the quarter ending March 31, 1991; and 9¾ percent for the quarter ending June 30, 1991.

2. For variable rate loans executed during the period of January 27, 1981 through October 21, 1985, the interest rate is 9⅜ percent. Using the regulatory formula (42 CFR 60.13(a)) in effect for that time period, the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (5.76 percent); adding 3.50 percent (9.26 percent); and rounding that figure to the next higher one-eighth of 1 percent (9⅜ percent).

3. For fixed rate loans executed during the period of July 1, 1991 through September 30, 1991, and for variable rate loans executed on or after October 22, 1985, the interest rate is 8⅞ percent. The Health Professions Training Assistance Act of 1985 (Pub. L. 99–129), enacted October 22, 1985, amended the formula for calculating the interest rate by changing 3.5 percent to 3 percent. Using the regulatory formula (42 CFR 60.13(a)), the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (5.76 percent); adding 3.0 percent (8.76 percent) and rounding that figure to the next higher one-eighth of 1 percent (8⅞ percent).

(Catalog of Federal Domestic Assistance No. 13.108, Health Education Assistance Loans)

Dated: July 8, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91–16599 Filed 7–11–91; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

Establishment of the Board of Scientific Counselors, National Center for Research Resources

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776) and section 402(b)(6), of the Public Health Service Act, as amended (42 U.S. Code 282(b)(6)), the Director, National Institutes of Health (NIH), announces the establishment of the Board of Scientific Counselors, National Center for Research Resources.

The Board of Scientific Counselors shall advise the Director and the Deputy Director for Intramural Research, NIH, and the Director, NCRR, concerning the Center's intramural research programs through periodic visits to the laboratories to assess the research in progress and evaluate the productivity and performance of staff engineers, veterinarians, and other scientists.

Duration of this committee is continuing unless formally determined by the Director, NIH, that termination would be in the best public interest.

Dated: July 3, 1991.

Bernadine Healy,

Director, National Institutes of Health.

[FR Doc. 91–16564 Filed 7–11–91; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; Meeting of the National Commission on Sleep Disorders Research

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Commission on Sleep Disorders Research, National Institute on Aging.

On July 19 and 20, 1991, there will be public hearings of the National Commission on Sleep Disorders Research. The July 19 hearing is scheduled from 8:30 am. to 5 pm. at The Case Western Reserve University, located at 10900 Euclid Avenue, Cleveland, Ohio. The purpose of the hearing is to provide Commissioners with expert and patient testimony which would be helpful in preparing a report to Congress with recommendations for action in the area of sleep disorders and its impact on public health. The proposed theme for the hearing is sleep

and breathing. The hearing will address workplace issues, the health consequences of breathing during sleep, education in sleep hygiene, and research opportunities on sleep.

On July 20, 1991 the hearing is scheduled from 9 a.m. to 3 p.m. at the University of Illinois at Chicago College of Nursing, 845 South Damen Avenue, Chicago, Illinois. The proposed theme for the hearing will be the impact of Sleep Disorders among family members. The hearing will address clinical and basic research on Narcolepsy and sleep. Attendance by the public to either hearing will be limited to space available. For additional information, please call William C. Dement, M.D., Ph.D., Chairman, National Commission on Sleep Disorders Research, at the Stanford University Sleep Disorders Center, 701 Welch Road, suite 2226, Palo Alto, CA., 415–725–6484.

Interested persons should contact Andrew Monjan, Ph.D., M.P.H., Executive Secretary, National Commission on Sleep Disorders Research, 9000 Rockville Pike, Building 31C, room 5C35, Bethesda, Maryland, 301–496–9350, for further details and substantive information on the meetings.

Dated: July 8, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–16658 Filed 7–9–91; 2:19 pm]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Meeting of Basic Sciences II Subcommittee of the Acquired Immunodeficiency Syndrome Research Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Basic Sciences II Subcommittee of the Acquired Immunodeficiency Syndrome Research Review Committee, National Institute of Allergy and Infectious Diseases, on August 2, 1991, at the Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Bethesda, Maryland 20815.

The meeting will be open to the public from 8:30 a.m. to 9 a.m. on August 2 to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in §§ 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9 a.m. until adjournment on August 2. These applications, proposals, and discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Allen Stoolmiller, Scientific Review Administrator, Basic Sciences II Subcommittee of the Acquired Immunodeficiency Syndrome Research Review Committee, NIAID, NIH, Westwood Building, Room 3A11, Bethesda, Maryland 20892, telephone (301–496–7966), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: June 28, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–16565 Filed 7–11–91; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Meeting, National Advisory Board for Arthritis and Musculoskeletal and Skin Diseases

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Board for Arthritis and Musculoskeletal and Skin Diseases on July 14–15, 1991. The meeting will be held at the Crystal City Gateway Marriott Hotel, 1700 Jefferson Davis Highway, Arlington, Virginia 22202. The subcommittees will meet July 14, 6 p.m. to approximately 10 p.m. and the full board will meet July 15, 8:30 a.m. to approximately 5 p.m. The meetings, which will be open to the public, are being held to discuss the Board's activities and to continue evaluation of the National effort to combat arthritis and musculoskeletal and skin diseases. Attendance by the public will be limited to space available.

Ms. Geraldine B. Pollen, Executive Director, National Advisory Board for Arthritis and Musculoskeletal and Skin Diseases, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 496–6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting her office.

Dated: July 8, 1991.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 91–16657 Filed 7–9–91; 2:19 pm]

BILLING CODE 4140–01–M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following requests have been submitted to OMB since the list was last published on June 28, 1991.

Note: The Public Health Service announcement for the week ending June 21, was published on Wednesday, June 19.

(Call PHS Reports Clearance Officer on 202–245–2100 for copies of request)

1. Health Education Assistance Loan (HEAL) Program—Forms HRSA 502–1&2, HRSA 500–1&2, HRSA 512—0915–0043—The information obtained from lenders on these forms is essential for sound and responsible program management. The Repayment Schedule establishes the amounts, number and due dates of payments. The Promissory Note provides legal documentation of the loan. The Lender's Call Report enables DHHS to monitor outstanding HEAL loans. Respondents: Non-profit institutions.

	Number of respondents	Number of responses per respondent	Number of hours per response
Disclosure—Repayment Schedule, Promissory Note	72	583	.5 hour
Reporting—Lender's Call Report	72	4	1.5 hours

Estimated Annual Burden . . . 21,432 hours

2. Seroprevalence Survey of HIV Infection In Hospital-Based Surgeons—New—CDC plans to conduct a two-part voluntary serosurvey among surgeons practicing in five specified specialities to study HIV infection among this population. The results from this study will help CDC devise recommendations for these and other health care workers exposed to a great deal of blood. Respondents: Individuals or households; Number of Respondents: 1,280; Number of Responses per Respondent: 1; Average Burden per Response: .80 hours; Estimated Annual Burden: 1,027 hours.

3. Grant Program for Scholarships for the Undergraduate Education of Professional Nurses (SUEPN)—Forms—0915–0141—The Contract is for Nursing students to enter into an agreement with the Secretary of DHHS to fulfill the service obligation for Scholarship Assistance received under the SUEPN Grant Program. The employment verification form is used to track compliance of nurse recipients during the obligated service period. Respondents: Individuals or households; businesses or other for profit; non-profit institutions.

	Number of respondents	Number of responses per respondent	Number of hours per response
Student Contract	1,500	1	.50 hour
Employment Verification—Recipients	175	1	.167 hour
Employment Verification—Employers	175	1	.083 hour

Estimated Annual Burden . . . . . 794 hours

4. Third National Health and Nutrition Examination Survey (NHANES III)—0920–0237—NHANES III will measure and monitor the health and nutritional status of the U.S. It is a six-year survey involving 40,000 participants ages two months and older. Collaborative agreements have been signed with 16 other centers and institutes within DHHS and with 2 other Departments who will use the data. Respondent: Individuals or households; Number of Respondents: 6,750; Number of Responses per Respondents: 1; Average Burden per Response: 4.4 hours; Estimated Annual Burden: 29,631 hours.

5. Assessment of HIV Counseling, Testing Referral and Partner Notification Services—New—Public Health Clinics providing HIV counseling, testing, referral and partner notification services will be surveyed. Through on-site observation and interviews, the kinds and levels of services provided and the factors affecting service delivery will be ascertained. Respondent: Individuals or households; businesses or other for-profit; non-profit institutions; Number of Respondents: 50; Number of Responses per Respondent: 5.5; Average Burden per Response: 1.0 hours; Estimated Annual Burden: 275 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this Notice directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: July 1, 1991.

Sandra K. Mahkorn,

Deputy Assistant Secretary for Public Health Policy.

[FR Doc. 91–16233 Filed 7–11–91; 8:45 am]

BILLING CODE 4160–17–M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511, the Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on June 10, 1991.

(Call Reports Clearance Officer on (301) 965–4149 for copies of package)

1. Statement for Determining Continuing Eligibility for Supplemental Security Income Payments—0960–0000. The information collected on the form SSA–8202–F6 (TEST) will be used by the Social Security Administration (SSA) in conjunction with the mandated scheduled redetermination of supplemental security income (SSI) recipients. SSA uses the information collected by the form to periodically redetermine SSA recipients' continuing eligibility and payment amount under section 1611(c)(1) of the Social Security Act. Without the test version of this form, SSA would not be able to determine whether the payment accuracy increases while reducing the public burden. The affected public is comprised of SSI recipients who are due for a scheduled redetermination by statute.

Number of Respondents: 32,000.
Frequency of Response: 1.
Average Burden Per Response: 10 minutes.
Estimated Annual Burden: 5,333 hours.

2. Unsuccessful Callers To The 800 Number—0960–XXXX—The information collected on the form SSA–4805 will be used by the Social Security Administration (SSA) to evaluate the public's reaction when they have been unsuccessful in utilizing the 800 Number Service. Without this data collection SSA would not be able to recommend viable approaches for improving its 800 Number Service to the public and claimants could be denied the opportunity to file timely claims under the various Social Security programs. The affected public will be comprised of a random sample of 1000 individuals

* This is a one-time only test.

who have attempted to use the 800 Number Service but failed to get through due to an overloading of the lines.

Number of Respondents: 1,000.
Frequency of Response: 1.
Average Burden Per Response: 17 minutes.
Estimated Annual Burden: 283 hours.

3. 800 Number Service Evaluation—0960–0465—The information collected on the forms SSA–4305.1, Caller Talked To A Teleservice Representative, SSA–4305.2, Caller Used Automated Message, SSA–4305.3, Caller Hung Up In Queue, is used by the Social Security Administration (SSA) to evaluate and test the effectiveness of the 800 Number Service that is currently being utilized by the public to obtain general information, as well as to file or service claims under the various Social Security programs. Without this information SSA would not be able to effectively evaluate and recommend ongoing improvements for the 800 Number Service. The affected public consists of randomly selected individuals who have recently contacted SSA.

Number of Respondents: 4,000.
Frequency of Response: 1.
Average Burden Per Response: 15.
Estimated Annual Burden: 1,000 hours.

4. Employer Classification Update—0960–0262—The information collected on the form SSA–L378 is used by the Social Security Administration to clarify and update missing or incomplete data on the form SS–4, Application For Employer Identification Number. The responses are translated into various codes and combined with tax return data. This information is used in program planning, revenue estimates and employment studies. The affected public is comprised of new employers with 11 or more employees.

Number of Respondents: 75,000.
Frequency of Response: 1.
Average Burden Per Response: 3 minutes.
Estimated Annual Burden: 3,750 hours.

5. Employment Relationship Questionnaire—0960–0040—The information collected on the form SSA–7160 is used to determine the status of certain employees in various occupational fields. The affected public is comprised of claimants and their employers when the claimants' employee status is questionable.

Number of Respondents: 47,500.
Frequency of Response: 1.
Average Burden Per Response: 25 minutes.
Estimated Annual Burden: 19,792 hours.

OMB Desk Officer: Laura Oliven.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: July 8, 1991.

Ron Compston,

Social Security Administration, Reports Clearance Officer.

[FR Doc. 91–16359 Filed 7–11–91; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N–91–3290; FR–2732–N–03]

Requirements Governing the Lobbying of HUD Personnel; Section 112 of the Reform Act

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: This notice announces that the Office of Ethics of the Department of Housing and Urban Development will receive all registration and reporting documents required to be filed under 24 CFR part 86—Requirements Governing the Lobbying of HUD Personnel—section 112 of the Reform Act. A final rule was published on May 17, 1991, at 56 FR 22912.

The Office of Ethics will be responsible for retaining information and making it available for public inspection consistent with part 86. The Office will publish a separate notice in the **Federal Register**, informing the public when and how public inspection may be conducted. In addition, the Office will serve as the primary contact for questions regarding part 86.

Documents required to be submitted under part 86 should be sent to: Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Questions regarding part 86 should be directed to:

Office of Ethics—Telephone (202) 708–3815; TDD (202) 708–1112. (These are not toll-free numbers.)

FOR FURTHER INFORMATION CONTACT: Arnold J. Haiman, Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 708–3815; TDD (202) 708–1112. (these are no toll-free numbers.)

Dated: July 3, 1991.

Jack Kemp,

Secretary.

[FR Doc. 91–16648 Filed 7–11–91; 8:45 am]

BILLING CODE 4210–32–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–91–1917; FR–2934–N–34]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: July 12, 1991.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR Part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. All properties reviewed this week have been determined unsuitable.

Properties listed as unsuitable will not be made available for any other purpose

for 20 days from the date of this notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets NW, Washington, DC 20405; (202) 501–0067; Dept. of Transportation: Angelo Picillo, Deputy Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW, room 10317, Washington, DC 20590; (202) 366–5601. (These are not toll-free numbers.)

Dated: July 5, 1991.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

Unsuitable Properties

Buildings (by State)

Alabama

Bldg. #21.
Coast Guard Aviation Training Center.
N. side Bates Field.
Mobile Co: Mobile AL 36608.
Landholding Agency: DOT.
Property Number: 879130001.
Status: Excess.
Reason: Other.
Comment: Extensive deterioration.

Washington

Former Barlett Residence.
Star Route, Seatons Grove.
Elmer City Co: Okanogan WA 99124.
Landholding Agency: GSA.
Property Number: 549130001.
Status: Excess.
Reason: Other.
Comment: Structurally unsound.
GSA Number: 9–I–WA–439–0.

Former Beck Residence.
Star Route County Road.
Elmer City Co: Okanogan WA 99124.
Landholding Agency: GSA.
Property Number: 549130002.
Status: Excess.
Reason: Other.
Comment: Structurally unsound.
GSA Number: 9–I–WA–439–0.

Summary of Unsuitable Properties

Total number of Properties = 3.

[FR Doc. 91–16438 Filed 7–11–91; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Flathead Indian Irrigation Project, MT

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Final notice of operation and maintenance rates.

SUMMARY: The purpose of this notice is to establish the assessment rates for operating and maintaining the Flathead Indian Irrigation Project for 1992. The assessment rates are based on a prepared estimate of the cost of normal operations and maintenance. Normal operations and maintenance is defined as the average per acre cost of all activities involved in delivering irrigation water, including maintaining pumps and other facilities.

EFFECTIVE DATE: This public notice will become effective on publication in the **Federal Register** and remain in effect until changed by further notice.

FOR FURTHER INFORMATION CONTACT: Portland Area Director, Portland Area Office, Bureau of Indian Affairs, 911 NE. 11th Avenue, Portland, Oregon 97232–4169.

AUTHORITY: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (36 Stat. 583, 25 U.S.C. 385).

This notice is issued by authority delegated to the Assistant Secretary for Indian Affairs by the Secretary of the Interior in 209 DM 8 and redelegated by the Assistant Secretary for Indian Affairs to the Area Director in 10 BIAM 3 and pursuant to § 171.1(e) of part 171, subchapter H, chapter 1, title 25 of the Code of Federal Regulations, which provides for the Area Director to fix and announce the rates for operation and maintenance assessments and related information on the Flathead Indian Irrigation Project for calendar year 1992 and subsequent years.

SUPPLEMENTARY INFORMATION: On May 17, 1991, the Bureau published notice of proposed operation and maintenance rates for 1991, 56 FR 23000. The notice provided opportunity to comment before a final rate is published. The Bureau of Indian Affairs received several comments from the Flathead Joint Board of Control (JBC) which were considered.

The JBC commented that it has no information relating to the Capital Recovery Fund (CFR). The BIA states the budget showed no additions to the CFR in 1992, expenditures are shown on periodic reports and copies are forwarded to the JBC.

The JBC questions if normal operations and maintenance include costs associated with other benefits such as Fishery, recreation, aesthetics, and flood control. The BIA notes any costs associated with providing for senior water rights would be a cost of normal operation and maintenance, and any costs associated with minimizing other impacts caused by irrigation facilities would be normal operation and maintenance.

The JBC asks what is the impact of maintaining instream flows on pumping charges in the O&M assessment? Management states maintaining of instream flows may increase pumping cost some years but, instream flows is not a discretionary item as senior water rights must be observed.

The JBC continues, would a rehabilitation and betterment program reduce O&M? Is the proposed rate "normal" in view of the need for rehabilitation and betterment. The BIA replies that a rehabilitation and betterment program in future years will increase the annual repayment and should decrease annual O&M costs. However, the 1992 Budget and assessment are based on the actual costs required to operate and maintain the existing Project.

In another comment JBC is opposed to the principle which forces them to pay for fish rescue without receiving any information concerning the numbers of fish retrieved in rescue operations. Management contends all activities entailed in delivering irrigation water include operation, maintenance, pumping and peripheral activities related to minimizing irrigation impacts to fisheries that interact with project facilities. The additional cost to gather this information would increase already escalated assessments with no relative benefit to the water user as a whole. Therefore, costs were not included in the final rate to provide for the collection of this data.

The JBC requested that the rate be set at $17.55 rather than $17.80 deleting the $.25 per acre for O&M on fish screens, since they had only received verbal notice of this portion of the budget. The BIA will set the rate at $17.80 as proposed including the $.25 per acre for O&M on fish screens. The JBC may obtain a copy of the revised budget at the irrigation project office.

Irrigation Operation and Maintenance Charges: In compliance with the above,

the operation and maintenance charges for the lands under the Flathead Irrigation Project, Montana, for the season of 1992 and subsequent years until further notice, are hereby fixed as follows:

Lands included in an Irrigation District, and lands held in trust for Indian and non-District lands will be assessed operation and maintenance charges at $17.80 per acre for the season of 1992 and subsequent years.

Payment: The operation and maintenance charges on the trust and non-District lands become due on April 1 each year and on the lands within an Irrigation District are billed Biannually. To all assessments on lands in non-Indian ownership, remaining unpaid 60 days after the due date, there shall be added a penalty and interest for each month, or fraction thereof, from the due date until paid. No water shall be delivered to any farm unit until all O&M charges have been paid for that farm unit.

Interest and Penalty Fees: Interest and penalty fees will be assessed, where required by-law, on all delinquent operation and maintenance assessment charges as prescribed in the Code of Federal Regulations, title 4, part 102, Federal Claims Collection standards; and 42 BIAM Supplement 3, part 3.8 Debt Collection Procedures.

Stan Speaks,

Portland Area Director.

[FR Doc. 91-16572 Filed 7-11-91; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Land Management

[WY-920-41-5700; WYW32012]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

July 3, 1991.

Pursuant to the provisions of Public Law 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW32012 for lands in Campbell County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessees have agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16-2/3 percent, respectively.

The lessees have paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW32012 effective November 1, 1990, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Jean Mickey,

Acting Supervisory Land Law Examiner.

[FR Doc. 91-16619 Filed 7-11-91; 8:45 am]

BILLING CODE 4310-22-M

[WY-920-41-5700; WYW80570]

Proposed Reinstatement of Terminated Oil and Gas Lease

July 5, 1991.

Pursuant to the provisions of Public Law 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW80570 for lands in Albany County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16 2/3% percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW80570 effective October 1, 1990, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Beverly J. Poteet,

Supervisory Land Law Examiner.

[FR Doc. 91-16620 Filed 7-11-91; 8:45 am]

BILLING CODE 4310-22-M

[AZ-930-01-4214-11; A-9708]

Expiration of Withdrawal and Opening of Land; Arizona; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of correction of legal description.

SUMMARY: This notice corrects a legal description in a notice opening land in Arizona previously published in the **Federal Register** on May 31, 1991 (56 FR 24831). On page 24831, in column 1, line 28, in Section 22, "W½SE¼SE¼" is corrected to read "W½SE¼SW¼". In column 1, line 29, in Section 27, "SW¼NW¼NE" is corrected to read "SW¼NW¼NE⅛".

Dated: June 28, 1991.

John H. Stephenson,

Acting Deputy State Director, Lands and Renewable Resources.

[FR Doc. 91-16587 Filed 7-11-91; 8:45 am]

BILLING CODE 4310-32-M

Reclamation Bureau

All-American Canal Lining Project, Imperial County, California

AGENCY: Bureau of Reclamation (Reclamation).

ACTION: Notice of availability of the draft environmental impact statement/draft environmental impact report (DEIS/DEIR): INT DES-91-18.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, and section 21002 of the California Environmental Quality Act, Reclamation prepared a joint DEIS/DEIR on a proposed project to line a section of the All-American Canal between Pilot Knob and Drop 3 for the purpose of conserving water. The document evaluates alternatives for lining the All-American Canal.

DATES: A 60-day public review period commences with the publication of this notice. Written comments on the document may be submitted to the Regional Director at the address below on or before September 10, 1991.

ADDRESSES: Single copies of the DEIR/DEIS may be obtained on request to the Regional Director at the address below: Regional Director (Attention: LC-150), Bureau of Reclamation, Lower Colorado Region, P.O. Box 427, Boulder City, Nevada 89005; telephone: (702) 293-8510.

Copies of the DEIS/DEIR are also available for public inspection and review at the following locations:

Bureau of Reclamation, Technical Liaison Division, U.S. Department of the Interior, 1849 C Street, NW., room 7456, Washington, DC 20240; telephone: (202) 208-4662.

Bureau of Reclamation, Denver Office Library, Building 67, room 167, Denver Federal Center, 6th and Kipling, Denver, Colorado 80225; telephone: (303) 236-6963.

Bureau of Reclamation, Yuma Projects Office, 7301 Calle Agua Salada, Yuma, Arizona 85366; telephone: (602) 343-8100.

Imperial Irrigation District, 333 East Barioni Boulevard, Imperial, California 92251.
Metropolitan Water District of Southern California, 1111 Sunset Boulevard, Los Angeles, California 95814.
Coachella Valley Water District, Corner of Highway 111 and Avenue 52, Coachella, California 92236.

Public Libraries: Located in El Centro, Imperial, Coachella, San Diego, Brawley, Holtville, Calexico, and Los Angles (Main Library), California; and Yuma, Arizona.

FOR FURTHER INFORMATION CONTACT: Mr. Martin P. Einert, Planner, Bureau of Reclamation, Lower Colorado Region, P.O. Box 427, Boulder City, Nevada 89005; telephone: (702) 293–8510; or Dr. Randall K. Stocker, Imperial Irrigation District, P.O. Box 937, Imperial, California 92251; telephone: (619) 399–9426.

SUPPLEMENTARY INFORMATION: The purpose of the All-American Canal Lining Project is to conserve seepage lost from the unlined canal. The 29.9-mile section of the canal from Pilot Knob to Drop 4 loses an estimated 92,000 acre-feet of water per year. The proposed plan is to construct a parallel canal along 23 miles of the existing canal from 1 mile west of Pilot Knob to Drop 3. The proposed plan avoids environmentally sensitive seepage-induced wetlands habitat between Drop 3 and Drop 4 and archaeological resources at Pilot Knob. The existing canal would be retained for use in emergencies. Alternatives consist of lining the existing canal in place for 25 miles, lining it in place for 29.9 miles, constructing wells along 15 miles of the canal, and a no action alternative.

The proposed project has the potential to conserve about 70,000 acre-feet per year. The conserved water is needed in the southern California coastal area to offset a projected future water shortage. The conserved water would be available for use in accordance with the California Seven Party Agreement.

The existing unlined All-American Canal was constructed in sandy desert soils in the 1930's by Reclamation and began delivering water in the 1940's. The All-American Canal conveys over 3 million acre-feet of water per year from the Colorado River at Imperial Dam for use in the Imperial Valley and in the Coachella Valley.

The environmental resources along the canal inside seepage-induced wetlands habitat, cultural resources, terrestrial habitat, and the canal fishery. The project plan includes mitigation measures for these and other affected environmental aspects.

Dated: July 9, 1991.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 91–16665 Filed 7–11–91; 8:45 am]
BILLING CODE 4310–01–M

INTERNATIONAL BOUNDARY AND WATER COMMISSION

Availability of Final Environmental Assessment and Finding of No Significant Impact

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of availability of final environmental assessment and finding of no significant impact for an international agreement for a restricted use zone in the Rio Grande Boundary Segment at Brownsville, Texas and Matamoros, Tamaulipas.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Final Regulations (40 CFR parts 1500 through 1508); and the U.S. Section's Operational Procedures for Implementing Section 102 of NEPA, published in the **Federal Register** September 2, 1981 (46 FR 44083); the U.S. Section hereby gives notice that the Final Environmental Assessment and Final Finding of No Significant Impact for an international agreement for a Restricted Use Zone in the Rio Grande boundary segment at Brownsville, Texas and Matamoros, Tamaulipas are available. A Notice of Finding of No Significant Impact was published in the **Federal Register** on Friday, May 10, 1991 (56 FR 21686–21688), and provided a thirty (30) day review and comment period before making the finding final.

ADDRESSES: Mr. M.R. Ybarra, U.S. Section Secretary, International Boundary and Water Commission, United States and Mexico, U.S. Section, 4171 North Mesa Street, C–310, El Paso, Texas 79902–1422. Telephone: (915) 534–6698, FTS 570–6698.

SUPPLEMENTARY INFORMATION

Proposed Action

The proposed action is for the United States Government to enter into an international agreement with the Government of Mexico through a Minute of the IBWC establishing a Restricted Use Zone, measured perpendicular to the flow of the river, in a 10.2-mile (16.4-kilometer) segment of the Rio Grande defined in the upper reach as not less than 164 feet (50.0 meters) on either side of the centerline of the Rio Grande between River Mile 55.2 (88.8 kilometer) and River Mile 52.7 (84.8 kilometer), a transition length between River Mile 52.7 (84.8 kilometer) and River Mile 52.5 (84.5 kilometer) that progressively expands to 2,300 feet (701 meters), and not less than 2,300 feet (701 meters) between River Mile 52.5 (84.5 kilometer) and River Mile 45.0 (72.4 kilometer).

Alternatives Considered

Three Alternatives Were Considered

(1) The Proposed Action with Mexico Alternative (Restricted Use Zone), as described above, is the U.S. Section's Preferred Alternative. If the proposed zone is adopted by the two countries, the Governments of the United States and Mexico would meet their obligation under article IV, paragraph B (1) of the 1970 Boundary Treaty to prohibit the construction of works in their respective territories which, in the judgment of the Commission, may cause deflection or obstruction of the normal flow or flood flows of the river. In the absence of this Commission's designated Restricted Use Zone, the Commission, on behalf of the United States and Mexico, is limited in prohibiting activities along lands adjacent to the main channel of the Rio Grande in both countries.

(2) The No Action Alternative (Present River Levees Configuration with Possible Obstructions) is a continuance of the status quo through current practices and decisions. A no action alternative would be contrary to the provision in article IV B (1) of the 1970 Boundary Treaty that requires the Commission to recommend to the two Governments a distance within which the two Governments would prohibit construction of works that in the judgment of the Commission may cause deflection or obstruction of the normal and flood flows of the boundary rivers. Moreover, there would not exist an acceptable, jointly developed technical basis that both Governments would apply when the Commission makes its judgment under article IV B (1) of the 1970 Boundary Treaty.

(3) The 1985 Proposed Action with Mexico Alternative creates a restricted use zone for the reach from Brownsville-Matamoros downstream to the mouth of the river at the Gulf of Mexico. Under this alternative, the proposed width was established at 328 feet (100 meters), or a distance on either side of the river of not less than 49 feet (15 meters) landward of the high bank of the river. Under this alternative constructed works in either country could be built close to the river, and there would be a lack of authority by the IBWC to render a judgment

within approximately two-thirds of the floodplain that is included under the Proposed Action. Construction of works so close to the river in one country would result in considerable adverse impacts in the other country, impacts which the 1970 Boundary Treaty seeks to avoid.

Availability

Single copies of the Final Environmental Assessment and Final Finding of No Significant Impact may be obtained by request at the above address.

Dated: July 2, 1991.

Suzette Zaboroski,

Staff Counsel.

[FR Doc. 91-16571 Filed 7-11-91; 8:45 am]

BILLING CODE 4710-03-M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative Notice to the Commission of Intent to Perform Interstate Transportation for Certain Nonmembers

Date: July 9, 1991.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meeting each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

A. (1) Dairymen, Inc.

(2) 10140 Linn Station Road, Louisville, KY 40223.

(3) Various locations.

(4) Beverly L. Williams, 10140 Linn Station Road, Louisville, KY 40223.

B. (1) Flav-O-Rich, Inc.

(2) 10140 Linn Station Road, Louisville, KY 40223.

(3) Various locations.

(4) Beverly L. Williams, 10140 Linn Station Road, Louisville, KY 40223.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-16649 Filed 7-11-91; 8:45 am]

BILLING CODE 7035-01-M

Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Walter J. Engel, Inc., 1500 North Cassady Avenue, Columbus, Ohio 43219.

2. Wholly owned subsidiaries which will participate in the operations, and State of incorporation: Floral Transport Services, Inc., an Ohio corporation.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-16650 Filed 7-11-91; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-343; Sub-No. 1X]

Exemption and Interim Trail Use or Abandonment; Wisconsin Department of Transportation—Abandonment Exemption—Near Tomahawk and Heafford Junction, WI

Decided: July 3, 1991.

The Wisconsin Department of Transportation (WisDOT) has filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments* to abandon its 5.72-mile line of railroad between milepost 133.4 near Tomahawk and milepost 139.12 neat Heafford Junction, Lincoln County, WI.[1]

WisDOT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on August 12, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[2] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) must be filed by July 22, 1991.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by August 1, 1991 with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to WisDOT's representative:

James S. Thiel, General Counsel, Wisconsin Department of Transportation, Room 115B, Hills Farms, State Transportation Building, P.O. Box 7910, Madison, WI 53707.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

WisDOT and Lincoln County, WI (County) filed a request for a notice of interim trail use (NITU). In 1980, WisDOT and the County executed two rail banking and land use agreements under which the County assumed for the term of the agreement full responsibility for management of and any liability for use of the right-of-way. The agreements also provided for restoration of the right-of way for railroad purposes. On August 10, 1988, WisDOT transferred the right-of-way to the County, subject

[1] This decision is being served concurrently with a directly related decision in Docket No. AB-7 (Sub-No. 63), *Chicago, M. St. P. and Pac. R. Co.—Aban.—Near Tomahawk and Heafford Junction in Lincoln County, WI.*

[2] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible to permit the Commission to review and act on the request before the effective date of this exemption.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

to interim trails use under the National Trails System Act, 16 U.S.C. 1247(d).

While a petition containing an interim trail use statement need not be filed until 10 days after the date the notice of exemption is published in the **Federal Register** (49 CFR 1152.29(b)(2)), the provisions of 16 U.S.C. 1247(d) are applicable and all the criteria for imposing interim trail use/rail banking have been met. Accordingly, based on the agreements between WisDOT and the County, an NITU will be issued now under 49 CFR 1152.29. Additional trail use/rail banking statements under 49 CFR 1152.29 must be filed by July 22, 1991. If additional statements are filed, WisDOT is directed to respond to them. The use of the right-of-way for trails purposes is subject to restoration for railroad purposes.

WisDOT has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) issued an environmental assessment (EA) on July 5, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed by July 25, 1991.

Environmental and public use conditions will be imposed, where appropriate, in a subsequent decision.

It is ordered: 1. Subject to the conditions set forth above, WisDOT may discontinue service, cancel tariffs for this line on not less than 10 days' notice to the Commission, and salvage track and material consistent with interim trail use/rail banking after the effective date of this notice of exemption and NITU. Tariff cancellations must refer to this notice of exemption and NITU by date and docket number.

2. If another interim trail use/rail banking agreement is reached, it must require the trails user to assume, for the term of the agreement, full responsibility for management of, any liability arising out of the transfer of use (if the user is immune from liability, it need only indemnify WisDOT against any potential liability), and the payment of any and all taxes that may be levied or assessed against the right-of-way.

3. Interim trail use/rail banking is subject to the future restoration of rail service.

4. If the user intends to terminate trail use, it must send the Commission a copy of this notice of exemption and NITU and request that it be vacated on a specified date.

5. Interim trail use under the agreements described above may be implemented immediately. If another agreement for interim trail use/rail banking is reached by the 180th day after publication of this notice, interim trail use may be implemented. If no agreement is reached by the 180th day, WisDOT may fully abandon the line.

6. Provided no formal expression of intent to file an offer of financial assistance has been received, this notice of exemption and NITU will be effective August 12, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–16540 Filed 7–11–91; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public on the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Department Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New Collection

Bureau of Labor Statistics

Survey of displaced workers
CPS 1
Other—one-time survey, to be conducted as a special supplement to the January 1992 Current Population Survey
Individuals or households

Survey universe is 57,000 households. Respondent burden is estimated at approximately 1,450 hours. Supplement will utilize available space on regular CPS questionnaire.

The Current Population Survey (CPS) is the monthly household survey that provides the basic data on the labor force, total employment, and unemployment. The special CPS supplement on displaced workers, proposed for January 1992, would provide data on the persons who lost jobs over the 1987–91 period due to plant closings, companies going out of business, or layoffs from which they were not recalled. A similar survey was conducted in January 1990 (OMB No. 1220–0104).

Revision

OSHA

Electrical Standards for Construction
1218–0130
On Occasion
Business or other for-profit; small business or organizations
Respondents 483; total hours 523; 1.082 hrs. per response

This collection of information requires employers to maintain a written description of an assured equipment grounding conductor program.

Employment and Training Administration

JTPA Migrant and Seasonal Farmworkers Reporting Revisions for Programs Year 1991 and 1992
1205–0215; ETA 8595, 8596, 8597, 8598, 8599

Form No.	Affected public	Respondents	Frequency	Average time per response
Narrative	State/Local Govt	56	One-time	22 hrs.
Master Agreement	do	56	One-time	3 min.
ETA 8595	do	56	Annual	15 hrs.
ETA 8596	do	56	Annual	16 hrs.
ETA 8597	do	56	3 Times	7 hrs.
ETA 8598	do	56	3 Times	7 Hrs.
ETA 8599	do	56	Annual	29 hrs.
Recordkeeping	do	56	Annual	6 hrs. 20 min.
Forms Redesign	do	56	One-time	5 hrs. 52 min.
7,631 Total hours				

These forms are used to manage the national programs authorized under section 402 of the Job Training Partnership Act. These documents are the principal sources of program plans and performance data. They form the basis for the award of funds, Federal oversight and reports to Congress.

Extension

OSHA

Safety Testing and Certification
1218–0147
On Occasion
Businesses or other for-profit
Respondents 22; total hours 8,620; 391.8 hours per response

OSHA needs to collect certain informaiton from organizations to make an evaluation and determine if the organization meets the criteria to be recognized as a Nationally Recognized Laboratory (NRTL).

Employment Standards Administration

Establishment Information and Establishment Information (Sp.).
1215–0008; WH–45 and WH–45 (Sp.)
On occasion
Businesses or other for profit; Non-profit Institutions; Small businesses or organizations
5,000 respondents; 835 total hours; .167 hr. per response; 2 forms

Form WH–45, when completed by employers, is used to determine coverage of various establishments that are being considered for investigation under the Fair Labor Standards Act.

Signed at Washington, DC this 8th day of July, 1991.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 91–16663 Filed 7–11–91; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related

Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

Georgia:
GA91–40 (Feb. 22, 1991)... p. 302c, p. 302d.
Massachusetts:
MA91–1 (Feb. 22, 1991).... p. 421, pp. 423–438b.
New Jersey:
NJ91–3 (Feb. 22, 1991)..... p. 721, pp. 722–744.
New York:
NY91–9 (Feb. 22, 1991)..... p. 869, pp. 870–872.
Virginia:
VA91–48 (Feb. 22, 1991)... p. 1353, p. 1354.

Volume II

Iowa:
IA91–5 (Feb. 22, 1991)..... p41, pp. 42–48.
Illinois:
IL91–1 Feb. 22, 1991)..... p69, pp. 70–96b.
IL91–3 (Feb. 22, 1991) ..... p115, pp. 116–120.
IL91–4 (Feb. 22, 1991) ..... p121, pp. 122–125.
IL91–9 (Feb. 22, 1991) ..... p153, p. 154.
IL91–13 (Feb. 22, 1991) ..... p183, p. 184.
IL91–14 (Feb. 22, 1991) ..... p195, pp. 195–196.
IL91–15 (Feb. 22, 1991). .... p205, p. 206.
IL91–18 (Feb. 22, 1991). .... p237, pp. 238–240b.
Indiana:
IN91–1 (Feb. 22, 1991)..... p243, pp. 244–247.
IN91–2 Feb. 22, 1991)..... p259, pp. 260–279.
Texas:
TX91–3 (Feb. 22, 1991)..... p1021, p. 1023.
Wisconsin:
WI91–4 (Feb. 22, 1991) ..... p1209, pp. 1210–1212.
WI91–12 (Feb. 22, 1991) ... p1263, pp. 1264–1266.

Volume III

Arizona:
AZ91–2 (Feb. 22, 1991)..... p15, pp. 15–26b.
Colorado:
CO91–4 (Feb. 22, 1991)..... p167, pp. 168–173.
Oregon:
OR91–1 (Feb. 22, 1991)..... p371, pp. 372–387.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 5th day of July 1991.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 91–16494 Filed 7–11–91; 8:45 am]

BILLING CODE 4510–27–M

Pension and Welfare Benefits Administration

[Application Number D–8414]

Amendment to Prohibited Transaction Exemption (PTE) 80–51 Involving Bank Collective Investment Funds

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Adoption of amendment to PTE 80–51, and redesignation as PTE 91–38.

SUMMARY: This document amends PTE 80–51, a class exemption that permits Bank Collective Investment Funds, in which employee benefit plans have an interest, to engage in certain transactions, provided specified conditions are met. The amendment affects, among others, participants, beneficiaries and fiduciaries of plans that invest in the collective investment funds, banks, and other persons engaging in the described transactions.

EFFECTIVE DATE: The amendment to section I(a)(1)(A) of PTE 80–51 is effective as of July 1, 1990.

FOR FURTHER INFORMATION CONTACT: Lyssa Hall of the Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 523–8971 (this is not a toll-free number); or Diane Pedulla of the Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, (202) 523–9597 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On February 6, 1991, notice was published in the **Federal Register** (56 FR 4856) of the pendency before the Department of a proposed amendment to PTE 80–51 (45 FR 49709, July 25, 1980).[1] PTE 80–51 provides an exemption from the restrictions of sections 406 and 407(a) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1986 (the Code) by reason of certain provisions of section 4975(c)(1) of the Code.

The amendment to PTE 80–51 adopted by this notice was requested in an exemption application dated May 17, 1990, on behalf of the American Bankers Association (ABA). The exemption application was submitted pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code [2] and in accordance with ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).

Information collection requirements contained in PTE 80–51 have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1989 (Pub. L. 96–511) and have been assigned OMB number 1210–0082 approved for use through April 30, 1994.

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[1] Minor technical corrections were made to the language of the final exemption in a notice published in the **Federal Register** on August 8, 1980. (45 FR 52949).

[2] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), transferred the authority of the Secretary of the Treasury to issue exemptions of this type to the Secretary of Labor.

In the discussion of the exemption, references to sections 406 and 408 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

The notice of pendency gave interested persons an opportunity to comment on the proposal. Public comments were received pursuant to the provisions of section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1.

For the sake of convenience, the entire text of PTE 80–51, as amended, has been reprinted with this notice. The Department has redesignated the exemption as PTE 91–38.

1. Description of the Exemption

PTE 80–51 consists of four parts. Section I(a)(1)(A) of the exemption permits a bank collective investment fund to engage in transactions, which otherwise might be prohibited by sections 406 and 407(a) of the Act and section 4975(c)(1) of the Code, with persons who are parties in interest with respect to an employee benefit plan investing in the fund. The plan's participation in the fund, under section I(a)(1)(A) may not exceed five percent of the total assets in the collective investment fund.

The amendment to PTE 80–51 granted pursuant to this notice increases the percentage limitation in section I(a)(1)(A)(ii) of PTE 80–51 from 5 to 10 percent, so that the general exemption in section I(a)(1)(A) would be available where the interest of a plan in a bank collective investment fund does not exceed ten percent of the total assets in the collective investment fund.

The Department notes that all the relevant conditions contained in PTE 80–51, with the exception of the one modified by this amendment, still must be met under the amended class exemption. These conditions, among others, include a requirement that the party in interest is not the bank (or an affiliate) which holds the plan assets in its collective investment fund. In addition, the terms of the transaction must be at least as favorable to the bank collective investment fund as those obtainable in an arm's-length transaction with an unrelated party. Also, the bank must maintain certain records for a period of six years from the date of the transaction.

2. Discussion of Comments Received

The Department received three letters commenting on the proposed amendment to PTE 80–51. The ABA represents that it believes that the savings resulting from the reduced burden of compliance due to a higher percentage limitation would be of benefit to participants in that it would result in lower administrative costs.

The California Bankers Association (CBA), a trade association representing over 420 commercial banks in the State of California, supports the proposed amendment. The CBA represents that the proposed amendment to the class exemption would eliminate the competitive disadvantage currently faced by bank collective investment funds.

The Federal Retirement Thrift Investment Board, (the Board) which administers and manages the Thrift Savings Fund for federal employees, requested that the proposed amendment be extended for purposes of the Federal Employee's Retirement System Act of 1986 (FERSA).[3] In this regard, the Department notes that it proposed an amendment to PTE T88–1 on June 3, 1991, which would generally incorporate subsequent modifications to the class exemptions described therein.[4]

3. Miscellaneous

For purposes of clarity, section III(b) of the exemption has been restated to provide that only the bank will be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code if the records required pursuant to the exemption are not maintained or available.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of ERISA which require, among other things, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) In accordance with section 408(a) of ERISA, the Department makes the following determinations:

(i) The amendment set forth herein is administratively feasible;

(ii) It is in the interests of plans and of their participants and beneficiaries; and

(iii) It is protective of the rights of the participants and beneficiaries of plans;

(3) The class exemption is applicable to a particular transaction only if the transaction satisfies the conditions specified in the exemption; and

(4) The amendment is supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Exemption

Accordingly, PTE 80–51 is amended under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).

Section I—Exemption for Certain Transactions Involving Bank Collective Investment Funds

(a) Effective January 1, 1975, the restrictions of sections 406(a), 406(b)(2) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A), (B), (C) or (D) of the Code, shall not apply to the transactions described below if the applicable conditions set forth in section III are met.

(1) Transactions between parties in interest and bank collective investment funds: General. Any transaction between a party in interest with respect to a plan and a collective investment fund that is maintained by a bank and in which the plan has an interest, or any acquisition or holding by the collective investment fund of employer securities or employer real property, if the party in interest is not the bank that maintains the collective investment fund, any other collective fund maintained by the bank or any affiliate of the bank, and if, at the time of the transaction, acquisition or holding, either

(A) The interest of the plan together with the interests of any other plans maintained by the same employer or employee organization in the collective investment fund does not exceed—

(i) 10 percent of the total of all interests in the collective investment fund, if the transaction occurs prior to October 23, 1980; or

(ii) 5 percent of the total of all assets in the collective investment fund, if the transaction occurs on or after October

[3] PTE T88–1 (53 FR 52838 December 29, 1988) adopted six prohibited transaction class exemptions (including PTE 80–51) for purposes of the prohibited transaction provisions of FERSA.

[4] 56 FR 25140.

23, 1980, and on or before June 30, 1990; or

(iii) 10 percent of the total of all assets in the collective investment fund, if the transaction occurs on or after July 1, 1990; or

(B) The collective investment fund is a specialized fund that has a policy of investing, and invests, substantially all of its assets in short-term obligations (having a stated maturity date of one year or less or having a maturity date of one year or less from the date of acquisition by such specialized fund), including but not necessarily limited to—

(i) Corporate or governmental obligations or related repurchase agreements;

(ii) Certificates of deposit;

(iii) Bankers' acceptances; or

(iv) Variable amount notes of borrowers of prime credit.

(2) Special transactions not meeting the criteria of section I(a)(1)(A) between employers of employees covered by a multiple employer plan and collective investment funds. Any transaction between an employer (or an affiliate of an employer) of employees covered by a multiple employer plan and a collective investment fund maintained by a bank in which the plan has an interest, or any acquisition or holding by the collective investment fund of employer securities or employer real property, if at the time of the transaction, acquisition or holding—

(A) In the case of a transaction occurring prior to October 23, 1980, the employer is not a "substantial employer" with respect to the plan (within the meaning of section 4001(a)(2) of the Act); or

(B) In the case of a transaction occurring on or after October 23, 1980:

(i) The interest of the multiple employer plan in the collective investment fund does not exceed 10 percent of the total assets in the collective investment fund, and the employer is not a "substantial employer" with respect to the plan (within the meaning of section 4001(a)(2) of the Act); or

(ii) The interest of the multiple employer plan in the collective investment fund exceeds 10 percent of the total assets in the collective investment fund, but the employer is not a "substantial employer" with respect to the plan and would not be a "substantial employer" within the meaning of section 4001(a)(2) of the Act if "5 percent" were substituted for "10 percent" in that definition.

(3) Acquisition, sale or holding of employer securities and employer real property.

(A) Except as provided in subsection (B) of this section (3), any acquisition, sale or holding of employer securities and any acquisition, sale or holding of employer real property by a collective investment fund in which a plan has an interest and which does not meet the requirements of paragraphs (a)(1) and (a)(2) of this section, if no commission is paid to the bank or to the employer or any affiliate of the bank or the employer in connection with the acquisition or sale of employer securities or the acquisition, sale or lease of employer real property; and

(i) In the case of employer real property—

(aa) Each parcel of employer real property and the improvements thereon held by the collective investment fund are suitable (or adaptable without excessive cost) for use by different tenants, and

(bb) The property of the collective investment fund that is leased or held for lease to others, in the aggregate, is dispersed geographically.

(ii) In the case of employer securities—

(aa) The bank in whose collective investment fund the security is held is not an affiliate of the issuer of the security, and

(bb) If the security is an obligation of the issuer, either

1. The collective investment fund owns the obligation at the time the plan acquires an interest in the collective investment fund, and interests in the collective fund are offered and redeemed in accordance with valuation procedures of the collective investment fund applied on a uniform or consistent basis, or

2. Immediately after acquisition of the obligation: (a) Not more than 25 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by such plan, and (b) in the case of an obligation that is a restricted security within the meaning of rule 144 under the Securities Act of 1933, at least 50 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by persons independent of the issuer. The bank, its affiliates and any collective investment fund maintained by the bank shall be considered to be persons independent of the issuer if the bank is not an affiliate of the issuer.

(B) In the case of a plan that is not an eligible individual account plan (as defined in section 407(d)(3) of the Act), the exemption provided in subsection (A) of this paragraph (3) shall be available only if, immediately after the acquisition of the securities or real property, the aggregate fair market value of employer securities and employer real property with respect to which the bank has investment discretion does not exceed 10 percent of the fair market value of all the assets of the plan with respect to which the bank has such investment discretion.

(C) For the purposes of the exemption contained in subsection (A) of this section (3), the term "employer securities" shall include securities issued by, and the term "employer real property" shall include real property leased to, a person who is a party in interest with respect to a plan (participating in the collective investment fund) by reason of a relationship to the employer described in section 3(14) (E), (G), (H) or (I) of the Act.

(b) Effective January 1, 1975, the restrictions of section 406(a)(1) (A), (B), (C) and (D) and section 406(b) (1) and (2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A), (B), (C), (D) or (E) of the Code, shall not apply to the transactions described below, if the conditions of section III are met.

(1) Transactions with persons who are parties in interest with respect to the plan solely by virtue of being certain service providers or certain affiliates of service providers. Any transaction between a collective investment fund and a person who is a party in interest with respect to a plan that has an interest in the collective investment fund, if—

(A) The person is a party in interest (including a fiduciary) solely by reason of providing services to the plan, or solely by reason of a relationship to a service provider described in section 3(14) (F), (G), (H) or (I) of the Act, or both and the person neither exercised nor has any discretionary authority, control, responsibility or influence with respect to the investment of plan assets in, or held by, the collective investment fund, and

(B) The person is not an affiliate of the bank maintaining the collective investment fund.

2. Certain leases and goods. The furnishing of goods to a collective investment fund by a party in interest with respect to a plan participating in the collective investment fund, or the leasing of real property owned by the collective investment fund to such party in interest and the incidental furnishing of goods to such party in interest by the collective investment fund, if—

(A) In the case of goods, they are furnished to or by the collective investment fund in connection with real

property owned by the collective investment fund;

(B) The party in interest is not the bank maintaining the collective investment fund, or any affiliate of the bank, or any other collective investment fund maintained by the bank; and

(C) The amount involved in the furnishing of goods or leasing of real property in any calendar year (including the amount under any other lease or arrangement for the furnishing of goods in connection with the real property investments of the collective investment fund with the same party in interest or any affiliate thereof) does not exceed the greater of $25,000 or 0.5 percent of the fair market value of the assets of the collective investment fund on the most recent valuation date of the fund prior to the transaction.

(3) Management of real property. Any services provided to a collective investment fund in which a plan has an interest by the bank maintaining that fund or by an affiliate of that bank in connection with the management of the real property owned by the collective investment fund, if the compensation paid to the bank or its affiliate does not exceed the cost of the services to the bank or its affiliate.

(4) Transactions involving places of public accommodation. The furnishing of services, facilities and any goods incidental to such services and facilities by a place of public accommodation owned by a bank collective investment fund, to a party in interest with respect to a plan, which plan has an interest in the collective investment fund, if the services, facilities and incidental goods are furnished on a comparable basis to the general public.

Section II—Excess Holdings Exemption for Employee Benefit Plans

(a) Effective January 1, 1975, the restrictions of sections 406(a), 406(b)(2) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(A), (B), (C) or (D) of the Code shall not apply to any acquisition or holding of qualifying employer securities or qualifying employer real property (other than through a collective investment fund), if—

(1) The acquisition or holding contravenes the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407(a) of the Act solely by reason of being aggregated with employer securities or employer real property held by a collective investment fund in which the plan has an interest;

(2) The requirements of either paragraph (a)(1) or paragraph (a)(2) of section I of this exemption are met; and

(3) The applicable conditions set forth in section III of this exemption are met.

Section III—General conditions

(a) At the time the transaction is entered into, and at the time of any subsequent renewal thereof that requires the consent of the bank, the terms of the transaction are not less favorable to the collective investment fund than the terms generally available in arm's-length transactions between unrelated parties.

(b) The bank maintains for a period of six years from the date of the transaction, the records necessary to enable the persons described in paragraph (c) of this section to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the bank's control, the records are lost or destroyed prior to the end of the six-year period; and (2) no party in interest other than the bank shall be subject to the civil penalty that may be assessed under 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (c) below.

(c)(1) Except as provided in subsection 2 of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (b) of this section are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service,

(B) Any fiduciary of a plan who has authority to acquire or dispose of the interests of the plan in the collective investment fund, or any duly authorized employee or representative of such fiduciary.

(C) Any contributing employer to any plan that has an interest in the collective investment fund or any duly authorized employee or representative of such employer.

(D) Any participant or beneficiary of any plan that has an interest in the collective investment fund, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this paragraph shall be authorized to examine a bank's trade secrets or commercial or financial information which is privileged or confidential.

Section IV—Definitions and General Rules

For the purposes of this exemption,

(a) An "affiliate" of a person includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative of, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term "party in interest" includes a "disqualified person" as defined in section 4975(e)(2) of the Code.

(d) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or sister.

(e) (1) Except as provided in subparagraph (2) of this paragraph, the term "collective investment fund" means a common or collective trust fund or pooled investment fund maintained by a bank or a trust company.

(2) In the case of a common or collective trust fund or pooled investment fund maintained by a bank or trust company that consists of separate investment accounts, each separate investment account of that fund, rather than the entire fund, shall be considered to be a separate "collective investment fund" for purposes of this exemption.

(f) The term "multiple employer plan" means an employee benefit plan that satisfies at least the requirements of section 3(37)(A) (i), (ii) and (v) of the Act and section 414(f)(1) (A), (B) and (E) of the Code.

(g) The term "obligation" means a bond, debenture, note, certificate, or other evidence of indebtedness.

(h) The time as of which any transaction, acquisition or holding occurs is the date upon which the transaction is entered into, the acquisition is made or the holding commences. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into, or an acquisition is made, on or after January 1, 1975, or a renewal that requires the consent of the bank occurs on or after January 1, 1975,

and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, or at the time the acquisition is made, the requirements will continue to be satisfied thereafter with respect to the transaction or acquisition and the exemption shall apply thereafter to the continued holding of the securities or property so acquired. This exemption also applies to any transaction or acquisition entered into, or holding commencing prior to January 1, 1975, if either the requirements of this exemption would have been satisfied on the date the transaction was entered into or acquisition was made (or on which the holding commenced), or the requirements would have been satisfied on January 1, 1975, if the transaction had been entered into, the acquisition was made, or the holding had commenced, on January 1, 1975. Notwithstanding the foregoing, this exemption shall cease to apply to a holding exempt by virtue of section I(a)(1) at such time as the interest of the plan in the collective investment fund exceeds the percentage interest limitation of section I(a)(1), unless no portion of such excess results from an increase in the assets allocated to the collective investment fund by the plan. For this purpose, assets allocated do not include the reinvestment of fund earnings. Nothing in this paragraph shall be construed as exempting a transaction entered into by a collective investment fund which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

(i) Each plan participating in a collective investment fund shall be considered to own the same proportionate undivided interest in each asset of the collective investment fund as its proportionate interest in the total assets of the collective investment fund as calculated on the most recent preceding valuation date of the fund.

(j) Where any of the assets of a collective investment fund are invested in another collective investment fund, the interest of the plan in the second fund arising from its investment in the first fund shall be established by multiplying the percentage interest of the plan in the first fund by the percentage interest of the first fund in the second fund, such computation to be continued similarly in the event that further investments are made by the second investment fund in one or more other collective investment funds.

Signed at Washington, DC, this 5th day of July 1991.

Alan D. Lebowitz,

Deputy Assistant Secretary for Program Operations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 91-16559 Filed 7-11-91; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 91-65]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee.

DATES: August 8, 1991, 8:15 a.m. to 4:15 p.m.

ADDRESSES: National Aeronautics and Space Administration, Federal Building 10B, room 625, 600 Independence Avenue SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Smith, Office of Aeronautics, Exploration and Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2367.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance and direction to the space research and technology activities in the Office of Aeronautics, Exploration and Technology (OAET). The Committee, chaired by Dr. Joseph F. Shea, is composed of 17 members. The meeting will be open to the public up to the seating capacity of the room (approximately 30 persons including the Committee members and other participants).

Type of Meeting: Open.

Agenda

August 8, 1991

8:15 a.m.—Opening Remarks.
8:30 a.m.—Welcome.
9 a.m.—Fiscal Year 1991 Accomplishments and Fiscal Year 1993 Planning.
9:30 a.m.—Results and Discussion of Integrated Technology Plan External Review.
2 p.m.—External Coordination with Department of Defense and Industry.
3 p.m.—Ad Hoc Review Team Status Update.
3:45 p.m.—Future Ad Hoc Studies.
4 p.m.—Summary Session.
4:15 p.m.—Adjourn.

Dated: July 8, 1991.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 91-16621 Filed 7-11-91; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Catherine Wolhowe, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786-0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4) and (6) of section 552b of title 5, United States Code.

1. Date: August 1, 1991.

Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Fellowships for University Teachers applications in Anthropology, Sociology, Archaeology & Psychology, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1992.

2. *Date:* August 1, 1991.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in European History, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1992.

3. *Date:* August 1–2, 1991.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications submitted to the Humanities Projects in Museums and Historical Organizations program for the June 7, 1992, deadline, submitted to the Division of Public Programs, for projects beginning after January 1, 1992.

4. *Date:* August 2, 1991.
Time: 8:30 a.m. to 5:30 p.m.
Room: 430.
Program: This meeting will review Fellowships for University Teachers applications in Religious Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1992.

5. *Date:* August 2, 1991.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in Philosophy, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1992.

6. *Date:* August 5, 1991.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in Anthropology, Folklore, Psychology, and Education, submitted to the Division of Fellowships and Seminars, for projects beginning after January 2, 1992.

7. *Date:* August 5, 1991.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs, for projects beginning after January 1, 1992.

8. *Date:* August 6, 1991.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Fellowships for University Teachers applications in Philosophy, submitted to the Division Fellowships and Seminars, for projects beginning after January 1, 1992.

9. *Date:* August 6, 1991.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in American Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1992.

10. *Date:* August 12, 1991.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in Rhetoric, Communication, Theater, Film & American Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1992.

11. *Date:* August 12, 1991.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Fellowships for University Teachers applications in American History & Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1991.

12. *Date:* August 13, 1991.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Fellowships for University Teachers applications in European History, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1992.

13. *Date:* August 13, 1991.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in Religious Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1992.

14. *Date:* August 14, 1991.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Fellowships for University Teachers applications in Romance Languages and Literatures, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1992.

15. *Date:* August 14, 1991.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Fellowships for University Teachers and Fellowships for College Teachers and Independent Scholars applications in African, Asian and Latin American History, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1992.

16. *Date:* August 15, 1991.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Fellowships for University Teachers applications in Art History, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1992.

17. *Date:* August 15, 1991.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in Politics, Law, Sociology and Economics, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1992.

18. *Date:* August 16, 1991.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in American History I, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1992.

19. *Date:* August 16, 1991.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in American History II, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1992.

20. *Date:* August 16, 1991.

Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Fellowships for University Teachers and Fellowships for College Teachers and Independent Scholars applications in Music and Dance History and Criticism, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1992.

21. Date: August 19, 1991.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Fellowships for University Teachers applications in British Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1992.

22. Date: August 19, 1991.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in Art History, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1992.

23. Date: August 20, 1991.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Fellowships for University Teachers applications in Comparative Literature; Germanic, Slavic, and Asian Languages and Literatures; and Linguistics, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1992.

24. Date: August 20, 1991.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
This meeting will review Fellowships for College Teachers and Independent Scholars applications in Languages and Literatures I, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1992.

25. Date: August 21, 1991.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
This meeting will review Fellowships for University Teachers applications in Rhetoric & Criticism; Communication; Theater and Film History, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1992.

26. Date: August 21, 1991.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in Languages and Literatures II, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1992.

27. Date: August 22, 1991.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Fellowships for University Teachers applications on Political Science; Economics; Law and Jurisprudence, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1992.

28. Date: August 22, 1991.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in British Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1992.

29. Date: August 23, 1991.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review Fellowships for University Teachers applications in Classical, Medieval, and Renaissance Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1992.

30. Date: August 23, 1991.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Fellowships for University Teachers applications in American Literature and Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1992.

31. Date: August 23, 1991.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in Classical, Medieval, and Renaissance Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1992.

Catherine Wolhowe,
Advisory Committee Management Officer.

[FR Doc. 91–16644 Filed 7–11–91; 8:45 am]
BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Revised Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on July 11–13, 1991, in room P–110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the **Federal Register** on June 24, 1991. This revision is necessary to accommodate an additional session on Thursday, July 11 (see asterisked item). The remaining schedule is unchanged.

Thursday, July 11, 1991

8:30 a.m.–8:45 a.m.: Opening Remarks by ACRS Chairman (Open)—The ACRS Chairman will make opening remarks and comment briefly regarding items of current interest.

8:45 a.m.–10:45 a.m.: Proposed Schedule for Review of Evolutionary and Advanced Nuclear Power Plant Designs (Open)—The Committee will review the schedule proposed by the NRC staff for review of evolutionary and advanced nuclear power plant designs, the EPRI Advanced LWR Requirements Document, and the effort to revise regulatory guidance and the NCR standard review plan (SECY–91–161). Representatives of the NRC staff and DOE will participate in this session, and representatives of the nuclear industry may participate, as appropriate.

10:30 a.m.–11:30 a.m.: Proposed Actions for Improving Guidance for Performing Regulatory Analyses (Open)—The Committee will hear a briefing by and hold discussions with members of the NRC staff regarding proposed actions to improve guidance for the performance of regulatory analyses (SECY–91–114).

11:30 a.m.–12:15 p.m.: Activities of ACRS Subcommittees (Open)—The Committee will hear reports and hold discussions regarding recent ACRS subcommittee meetings and related activities, including the May 30, 1991 Advanced BWRs Subcommittee meeting and the June 18–19, 1991 Regional Programs Subcommittee meeting.

1:15 p.m.–3:15 p.m.: NUMARC/EPRI Fire Vulnerabilities Evaluation Methodology (Open/Closed)—The Committee will hear a briefing by and hold discussions with representatives of NUMARC/EPRI and the NRC staff regarding the NUMARC/EPRI fire vulnerabilities evaluation (FIVE) methodology and the draft NRC staff position on this matter.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to this matter.

3:30 p.m.–4:40 p.m.: Meeting with Director, NRC Office with Analysis and Evaluation of Operational Data (Open)—The Committee will hear a briefing and hold discussions regarding items of mutual interest, including the status and general use of the NRC performance indicator program, the role/

impact of AEOD activities on the regulatory process, and the use of PRA by the Committee to Review Generic Requirements in its decisionmaking process.

4:45 p.m.–5:15 p.m.: Meeting with NRC Chairman (Open)—An initial introductory session will be held with NRC Chairman Ivan Selin.

5:30 p.m.–6 p.m.: Meeting with Director, NRC Office for Analysis and Evaluation of Operational Data (Open)—The Committee will continue the discussion noted above.

6 p.m.–6:45 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss the proposed report to NRC regarding the use of PRA in the regulatory process.

Friday, July 12, 1991

8:30 a.m.–12 Noon: General Electric Company SBWR (Open/Closed)—The Committee will hear a briefing by and hold discussions with representatives of the General Electric Company and the NRC staff, as appropriate, regarding this simplified BWR nuclear power plant design.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to this project.

1 p.m.–2:30 p.m.: Fitness for Duty (Open/Closed)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff regarding incidents at nuclear power plants that have involved fitness for duty considerations. Representatives of the nuclear industry may participate, as appropriate, in those limited portions of this session where they have specific information to contribute.

Portions of this session will be closed as necessary to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

2:24 p.m.–3:30 p.m.: Reactor Operating Experience (Open)—The Committee will hear briefings by and hold discussions with members of the NRC staff regarding recent incidents and events at nuclear power plants, including a transformer failure/ generator fire at the Maine Yankee nuclear plant.

3:30 p.m.–4:15 p.m.: Activities of ACRS Members (Open)—The Committee will hear and discuss reports of Committee members who have attended and/or participated in meetings sponsored by others, including the Nuclear Plant Aging Research Review Group (March 26–28, 1991) and a visit to the Vermont Yankee Nuclear Plant.

4:15 p.m.–5 p.m.: Future ACRS Activities (Open)—The members will discuss anticipated subcommittee activities and items proposed for consideration by the full Committee.

5 p.m.–6:30 p.m.: Preparation of ACRS Reports to the NRC (Open)—The Committee will discuss proposed ACRS reports to the NRC regarding items that were not completed at previous meetings, various technical issues, and matters considered during this meeting, including use of PRA in the regulatory process; proposed resolution of GI–130, Essential Service Water System Failures at Multi-Unit Sites; the scope and nature of the General Electric ABWR review; and the NRC staff assessment of risk during low power and shutdown operations at nuclear power plants.

Saturday, July 13, 1991

8:30 a.m.–12 Noon: Preparation of ACRS Reports to NRC (Open/Closed)—The Committee will discuss proposed ACRS reports to the NRC regarding items noted above and items considered during this meeting.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to the matter being considered and information the release of which would represent a clearly unwarranted invasion of personal privacy.

1 p.m.–2 p.m.: Key Technical Issues for Future Nuclear Plants (Open)—The Committee will discuss a proposed list of key technical issues in need of early resolution for evolutionary and advanced nuclear power plants.

2 p.m.–2:30 p.m.: Miscellaneous (Open)—The Committee will complete discussion of items considered during this meeting or during previous meetings as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 2, 1990 (55 FR 40249). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those open portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director is such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Public Law 92–463 that it is necessary to close portions of this meeting noted above to discuss information the release of which would represent an unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)) and to discuss Proprietary Information applicable to the matter being considered (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492–8049), between 8 a.m. and 4:30 p.m.

Dated: July 8, 1991.

John C. Hoyle,

Advisory, Committee Management Officer.

[FR Doc. 91–16686 Filed 7–9–91; 3:49 p.m.]

BILLING CODE 7590–01–M

Governors' Designees Receiving Advance Notification of Transportation of Nuclear Waste

On January 6, 1982, the Nuclear Regulatory Commission (NRC) published in the **Federal Register**, as final, certain amendments to 10 CFR parts 71 and 73 (effective July 6, 1982), which require advance notification to Governors or their designees concerning transportation of certain shipments of nuclear waste and spent fuel. The advance notification covered in part 73 is for spent nuclear reactor fuel shipments and the notification for part 71 is for large quantity shipments of radioactive waste (and of spent nuclear reactor fuel not covered under the final amendment to 10 CFR part 73).

The following list updates the names, addresses and telephone numbers of those individuals in each State who are responsible for receiving information on nuclear waste shipments. The list will be published annually in the **Federal Register** on or about June 30, to reflect any changes in information.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS

States	Part 71	Part 73
Alabama	Col. Ned W. McHenry, Director, Alabama Department of Public Safety P.O. Box 1511, Montgomery, AL 36192-0501, (205) 242-4378.	Same.
Alaska	Mead Treadwell, Deputy Commissioner, Alaska Department of Environmental Conservation, P.O. Box 0, Juneau, AK 99811-1800,(907) 465-2600.	Same.
Arizona	Charles F. Tedford, Director, Arizona Radiation Regulatory Agency, 4814 South 40 Street, Phoenix, AZ 85040, (602) 255-4845, After hours: (602) 998-4662.	Same.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

States	Part 71	Part 73
Arkansas	Greta J. Dicus, Director, Division of Radiation Control and Emergency Management Programs, Arkansas Department of Health, 4815 West Markham Street, Little Rock, AR 72205, (501) 661-2301, After hours: (501) 661-2136 or 661-2000.	Same.
California	Robert P. Rengstorff, Chief, California Highway Patrol, P.O. Box 942898, Sacramento, CA 94298-0001, (916) 445-3253	Same.
Colorado	Major Lonnie J. Westphal, Officer in Charge, Operational Services Branch, Colorado State Patrol, 700 Kipling Street, Denver, CO 80215, (303) 239-4560, After hours: (303) 239-4501.	Same.
Connecticut	Honorable Timothy R.E. Keeney, Commissioner, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, CT 06106, (203) 566-2110.	Same.
Delaware	Patrick W. Murray, Secretary, Department of Public Safety, P.O. Box 818, Dover, DE 19903, (302) 739-4321	Same.
Florida	Harlan Keaton, Public Health Physicist Manager, Office of Radiation Control, Department of Health & Rehabilitative Services, P.O. Box 680069, Orlando, FL 32868-0069, (407) 297-2095.	Same.
Georgia	Al Hatcher, Director, Transportation Division, Public Service Commission, 1007 Virginia Avenue, Suite 310, Hapeville, GA 30354, (404) 559-6600.	Same.
Hawaii	Bruce S. Anderson, Ph.D., Deputy Director for Environmental Health, State Department of Health, 1250 Punchbowl Street, Honolulu, HI 96813, (808) 548-4139.	Same.
Idaho	Captain David C. Rich, Department of Law Enforcement (MCSAP), State Police Division, P.O. Box 55, Boise, ID 83707, (208) 334-2130, After hours: (208) 334-2900.	Same.
Illinois	Thomas W. Ortciger, Director, Illinois Department of Nuclear Safety, 1035 Outer Park Drive, 5th Floor, Springfield, IL 62704, (217) 785-9868, Emergency: (217) 782-6111, After hours: (217) 785-0600.	Same.
Indiana	Lloyd R. Jennings, Superintendent, Indiana State Police, 301 State Office Building, 100 North Senate Avenue, Indianapolis, IN 46204, (317) 232-8241, After hours: (317) 232-8248.	Same.
Iowa	Ellen M. Gordon, Director, Office of Disaster Services, Hoover State Office Building, Des Moines, IA 50319, (515) 281-3231.	Same.
Kansas	Leon H. Mannell, P.E., Administrator, Radiological Systems, The Adjutant General's Department, Division of Emergency Preparedness, P.O. Box C-300, Topeka, KS 66601, (913) 266-1409, After hours: (913) 296-3176.	Same.
Kentucky	Donald R. Hughes, Sr., Director, Division of Community Safety, Department for Health Services, 275 East Main Street, Frankfort, KY 40621, (502) 564-3700.	Same.
Louisiana	Capt. Louis Cook, Louisiana State Police, 265 South Foster Drive, P.O. Box 66614, Baton Rouge, LA 70896, (504) 925-6113.	Same.
Maine	Chief of the State Police, Maine Dept. of Public Safety, 36 Hospital Street, Augusta, ME 04330, (207) 289-2155	Same.
Maryland	Colonel James E. Harvey, Chief, Services Bureau, Maryland State Police, 1201 Reisterstown Road, Pikesville, MD 21208, (301) 486-3101.	Same.
Massachusetts	Robert M. Hallisey, Director, Radiation Control Program, Massachusetts Department of Public Health, 150 Tremont Street, 11th Floor, Boston, MA 02111, (617) 727-6214.	Same.
Michigan	James E. Cox, First Lieutenant, Commanding Officer, Special Operations Section, Michigan Department of State Police, 714 S. Harrison Road, East Lansing, MI 48823, (517) 336-6100.	Same.
Minnesota	John R. Kerr, Plans & Operations Coordinator, Minnesota Division of Emergency Management, B5-State Capitol, St. Paul, MN 55155, (612) 296-0481, After hours: (612) 649-5451.	Same.
Mississippi	James E. Maher, Director, Mississippi Emergency Management Agency, P.O. Box 4501, Fondren Station, Jackson, MS 39296-4501, (601) 352-9100 (24 hours).	Same.
Missouri	Richard D. Ross, Director, State Emergency Management Agency, 1717 Industrial Drive, P.O. Box 116, Jefferson City, MO 65102, (314) 751-9779, After hours: (314) 751-2748.	Same.
Montana	Mr. Adrian Howe, Chief, Occupational Health Bureau, Environmental Sciences Division, Department of Health & Environmental Sciences, Room A113, Cogswell Bldg., Helena, MT 59620, (406) 444-3671, After hours: (406) 442-1425.	Bill Good, Acting Administrator, Disaster & Emergency Services Division, P.O. Box 4789, Helena, MT 59604-4789, (406) 444-6911,
Nebraska	Colonel Ron Tussing, Superintendent, Nebraska State Patrol, P.O. Box 94907, Lincoln, NE 68509, (402) 471-2406 After hours: (402) 471-4545.	Same.
Nevada	Stanley R. Marshall, Supervisor, Radiological Health Section, Bureau of Regulatory Health Services, Nevada Division of Health, 505 East King Street, Room 202, Carson City, NV 89710, (702) 885-5394.	Same.
New Hampshire	Richard M. Flynn, Commissioner, New Hampshire Dept. of Safety, James H. Hayes Building, Hazen Drive, Concord, NH 03305, (603) 271-3636 (24 hours).	Same.
New Jersey	Kent Tosch, Chief, Department of Environmental Protection, Bureau of Nuclear Engineering, CN 411, Trenton, NJ 08625, (609) 530-4022.	Same.
New Mexico	Roland K. Lough, Chief, Emergency Management Bureau, Department of Public Safety, P.O. Box 1628, Santa Fe, NM 87504-1628, (505) 827-9222, After hours: (505) 294-7932.	Same.
New York	Donald A. DeVito, Director, State Emergency Mgmt. Office, Division of Military and Naval Affairs, Public Security Building, State Campus, Albany, NY 12226, (518) 457-2222.	Same.
North Carolina	Major Walter K. Chapman, Director, Administrative Services, North Carolina Highway Patrol Headquarters, P.O. Box 27687, Raleigh, NC 27611, (919) 733-7952, After hours: (919) 733-3861.	Same.
North Dakota	Dana K. Mount, Director, Division of Environmental Engineering, Department of Health, 1200 Missouri Avenue, Box 5520, Bismarck, ND 58502-5520, (701) 224-2348, After hours: (701) 221-5188.	Same.
Ohio	James R. Williams, Chief of Staff, Ohio Emergency Management Agency, 2825 W. Granville Road, Worthington, OH 43235-2712, (614) 889-7150.	Same.
Oklahoma	Dave McBride, Commissioner of Public Safety, Oklahoma Department of Public Safety, 3600 N. King Avenue, P.O. Box 11415, Oklahoma City, OK 73136-0145, (405) 425-2424 (24 hours).	Same.
Oregon	David Stewart-Smith, Administrator, Division of Nuclear Safety and Energy Facilities, Oregon Department of Energy, 625 Marion Street, NE., Salem, OR 97310, (503) 378-6469.	Same.
Pennsylvania	George M. Johnson, Director, Response and Recovery, Pennsylvania Emergency Management Agency, P.O. Box 3321, Harrisburg, PA 17105, (717) 783-8150, After hours: (717) 783-8150.	Same.
Rhode Island	William A. Maloney, Associate Administrator, MotorCarriers, Division of Public Utilities and Carriers, 100 Orange Street, Providence, RI 02903, (401) 277-3500.	Same.
South Carolina	Heyward G. Shealy, Chief, Bureau of Radiological Health, South Carolina Department of Health & Environmental Control, 2600 Bull Street, Columbia, SC 29201, (803) 734-4632, After hours: (803) 253-6497.	Same.
South Dakota	Gary N. Whitney, Division Director, Emergency and Disaster Services, 500 E. Capitol, Pierre, SD 57501, (605) 773-3231	Same.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

States	Part 71	Part 73
Tennessee	John White, Assistant Deputy Director, Tennessee Emergency Management Agency, State Emergency Operations Center, 3041 Sidco Drive, Nashville, TN 37204, (615) 252–3300, After hours: 1–800–258–3300.	Same.
Texas	David K. Lacker, Chief, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, TX 78756, (512) 835–7000.	Col. Joe E. Milner, Director, Texas Department of Public Safety, 5805 N. Lamar Blvd., Austin, TX 78752. (512) 465–2000
Utah	Larry F. Anderson, Director, Bureau of Radiation Control, 288 N. 1460 West, P.O. Box 16690, Salt Lake City, UT 84116–0690, (801) 538–6734, After hours: (801) 538–6333.	Same.
Vermont	Susan C. Crampton, Secretary, Vermont Agency of Transportation, 133 State Street, Montpelier, VT 05602, (802) 828–2657.	Same.
Virginia	Michael M. Cline, Director of Operations, Department of Emergency Services, Commonwealth of Virginia, 310 Turner Road, Richmond, VA 23225, (804) 674–2400.	Same.
Washington	Robert J. Huss, Deputy Chief, Washington State Patrol, General Administration Building, Mail Stop AX–12, Olympia, WA 98504–0612, (206) 586–234.	Same.
West Virginia	Colonel J. R. Buckalew, Superintendent, Department of Public Safety, 725 Jefferson Road, South Charleston, WV 25309, (304) 746–2111.	Same.
Wisconsin	Robert M. Thompson, Administrator, Wisconsin Division of Emergency Government, 4802 Sheboygan Ave., Room 99A, P.O. Box 7865, Madison, WI 53707, (608) 266–3232.	Same.
Wyoming	Lt. L. S. Gerard, Motor Carrier Officer, Wyoming Highway Patrol, 5300 Bishop Boulevard, Cheyenne, WY 82002, (307) 777–4317, After hours: (307) 777–4323.	Same.
District of Columbia	Norma J. Stewart, Program Manager, Pharmaceutical and Medical Devices, Control Division, Department of Consumer and Regulatory Affairs, 614 H Street, NW, Washington, DC 20001, (202) 727–7219, After hours: (202) 727–6161.	Same.
Puerto Rico	Santos Rohena, Jr., Chairman, Environmental Quality Board, P.O. Box 11488, Santurce, PR 00910, (809) 722–1175 or (809) 725–5140.	Same.
Guam	Fred M. Castro, Administrator, Guam Environmental Protection Agency, P.O. Box 2999, Agana, Guam 96910, (671) 646–7579.	Same.
Virgin Islands	Honorable Juan Luis, Governor, Government House, Charlotte Amalie, St. Thomas, Virgin Islands 00801, (809) 774–0001	Same.
American Samoa	Mr. Pati Faiai, Government Ecologist, Environmental Protection Agency, Office of the Governor, Pago Pago, American Samoa 96799, (684) 633–2304.	Same.
Commonwealth of the Northern Mariana Islands.	Nicolas M. Leon Guerrero, Director, Department of Natural Resources, Commonwealth of Northern Mariana Islands Government, Capitol Hill, Saipan, MP 96950, (670) 322–9830 or (670) 322–9834.	Same.

Questions regarding this matter should be directed to Mindy Landau at (301) 492–0308.

Dated at Rockville, MD this 29th day of May, 1991.

For the Nuclear Regulatory Commission.

Carlton Kammerer,

Director, State Programs, Office of Governmental and Public Affairs.

[FR Doc. 91–16527 Filed 7–11–91; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

President's Council of Advisors on Science and Technology Meeting; Change

The meeting of the President's Council of Advisors on Science and Technology (PCAST) scheduled for July 11 and 12, 1991, as announced in the **Federal Register**, June 6, 1991, page 26170 has been changed. The new dates are July 10 and 11, 1991. The meeting on July 10 will be closed to the public. On July 11, the open portion will begin at 9 a.m. to 11:30 a.m. at 722 Jackson Place, NW. The portion of the meeting from 11:30 a.m. to 5 p.m. will be held in The Old Executive Office Building and will be closed to the public.

Dated: July 3, 1991.

Ms. Damar Hawkins,

Executive Assistant, Office of Science and Technology Policy.

[FR Doc. 91–16588 Filed 7–11–91; 8:45 am]

BILLING CODE 3170–01–M

OFFICE OF PERSONNEL MANAGEMENT

Reservist Leave Bank Program

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management (OPM) is extending the open season, established under Public Law 102–25, signed by the President on April 6, 1991, for contributions of annual leave for Federal employee reservists returning from duty in the Persian Gulf War. This notice also advises Federal agencies that the date by which the total amount of annual leave contributions must be reported to OPM is extended.

ADDRESSES: Send or deliver written reports to Barbara L. Fiss, Assistant Director for Pay Policy and Programs, room 7H30, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415. Supplementary written reports may be sent to OPM by FAX at the following number: (202) 606–1349 or (FTS) 266–1349.

FOR FURTHER INFORMATION CONTACT: Joe Cerio, (202) 606–2858 or (FTS) 266–2858.

SUPPLEMENTARY INFORMATION: On May 16, 1991, OPM published a notice in the **Federal Register** that established anopen season to accept contributions of annual leave from qualified leave contributors under the reservist leave bank program, (56 FR 22741). The established open season was June 2 to July 13, 1991. However, due to the amount of work and time necessary for agencies to publicize the program and accept annual leave donations, and in order to give employees ample opportunity to consider participating in the program, OPM has decided to extend the open season to August 10, 1991. OPM expects that the extended open season will help foster the reservist leave bank program by assuring that employees are aware of the program and have sufficient time to make donations of annual leave.

Because of the extension of open season to August 10, 1991, OPM also is extending the date by which agencies must report the total number of hours of annual leave contributed during the open season to September 7, 1991 (4 weeks after the close of the open season). OPM must receive all agency reports on the total number of hours of annual leave contributed to the leave bank by September 7, 1991.

Following the receipt of these reports, OPM will divide the total amount of annual leave contributed under the reservist leave bank program equally among all "eligible returnees" and notify each agency of the amount of leave each returnee is to receive.

Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 91-16655 Filed 7-11-91; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2141.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, Washington, DC. 20549.

Revision: File No. 270-2, Regulation S-K, File No. 270-156, Form 20-F.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval revisions of the following: Regulation S-K and Form 20-F. The regulation and form provide a basis for the Commission to fulfill its statutory responsibility to ensure that issuers of publicly traded securities provide investors and the marketplace with adequate information. As revised, Form 20-F would affect 133 filers for a total of 277,970 burden hours. Burden hour estimates are not provided for Regulation S-K because the burden hours attributable to Regulation S-K are included in the estimates of burden hours for the forms that elicit from respondents the information required by Regulation S-K. The estimated burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey of the cost of the Commission's rules and forms. Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 5th St., NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Project 3235-0071, 0288), room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 1, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-16575 Filed 7-11-91; 8:45 am]

BILLING CODE 8010-01-M

Requests Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272-2142

Upon written request copies available from: Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549-1002.

Extension: File No. 270 18, Rule 6a-1 and Form l; File No. 270-l3, Rule 6a-2 and Form l-A.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et. seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval the following rules and forms under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et. seq.*):

Rule 6a-1 (17 CFR 240.6a-1) and Form 1, which prescribes the form for registration as a national securities exchange. New filings on Form 1 are very rare, with an estimated burden of 45 hours per response. There presently are eight registered national securities exchanges.

Rule 6a-2 (17 CFR 240.6a-2) and Form 1-A, which prescribes the form for amendments to the information contained in Form 1. Eight respondents incur an estimated average of 45 burden hours to comply with this rule.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 26, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-16576 Filed 7-11-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29402; File No. SR-DTC-91-18]

Self-Regulatory Organizations; The Depository Trust Co.; Filing Relating to the Rules and Procedures for Pledging Cash and Securities to the Depository Trust Co. and by The Depository Trust Co. to Lenders

July 3, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 3, 1991, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend DTC's Rules and Procedures to facilitate pledges of cash and securities to DTC by Participants and by DTC to lenders in the event of Participant failures to settle.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend DTC's Rules and

Procedures in order to facilitate pledges of cash and securities by Participants to DTC and by DTC to lenders in the event of Participant failures to settle. The most significant of these amendments clarifies and organizes in a new Rule existing provisions to DTC's acquisition of security interests in cash and securities that collaterize Participants' obligations to DTC.

The proposed rule change is consistent with the requirements of section 17A(b)(3)(F) of the Act,[1] in that the proposed rule change promotes the prompt and accurate clearance and settlement of transactions in securities. The proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible since the proposed rule change will be implemented within DTC's existing safeguards.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change, Received From Members, Participants, or Others

Written comments from DTC Participants or others on the proposed rule change have not been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if its finds such longer period to be appropriate and publishes its reason for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principle office of DTC. All submissions should refer to File No. SR-DTC-91-18 and should be submitted by August 2, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-16577 Filed 7-11-91; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78q-1(b)(3)(F).

[Release No. 34-29400; File No. SR-OCC-91-08]

Self-Regulatory Organization; the Options Clearing Corporation; of Filing of a Proposed Rule Change Relating to an Emergency Powers Provision

July 3, 1991.

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on April 24, 1991, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization ("SRO"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change relates to establishing an emergency powers provision at OCC to be operative in the event of an emergency.

[1] 15 USC 78s(b).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) SRO's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change will create an emergency powers provision as new section 15 (Emergency Powers) of article III (Board of Directors) of the By-laws of OCC. The new provision would become operative in the event of a specified emergency.[2] The proposal is premised on chapter 110 of the Delaware Corporation Code.[3]

The proposed rule change will permit the OCC Board of Directors ("Board") to designate certain officers of OCC who, upon the occurrence of a specified emergency, would be authorized to serve as directors and be included for the purpose of meeting a quorum call for any meeting of the Board or any Committee of the Board if the members of the Board or of any such Committee otherwise would be unable to convene readily for business.[4] Accordingly, such

[2] Proposed art. III, section 15(a) defines "emergency" as:

". . . any emergency which results, directly or indirectly, from an attack (including a terrorist attack) on the United States or on a locality in which the [OCC] maintains an office or customarily holds meetings of the Board of Directors, or from a war, armed hostilities, insurrection or other calamity involving the United States or any such locality, or from any nuclear or atomic disaster, or from any other catastrophe, disaster, communications systems failure, or other similar condition. . . ."

[3] Del. Stat. Ann., Tit. 8, Ch. 110. OCC is incorporated under the laws of the State of Delaware.

[4] Proposed art. III, section 15(c). Under the text of the proposal, such officers will have to have been designated on a list approved by the Board prior to any emergency for the purpose of establishing a quorum during an emergency. OCC's quorum requirements (which will be unchanged by the proposal) provide that the Board may transact no business, other than adjournment, without a quorum present at a meeting and specify that a quorum shall constitute a majority of the Board members but not less than six Board members. OCC By-Laws, art. III, § 13.

officers would be deemed directors for such a meeting of the Board and would be authorized to participate in any action available to the Board, including the approval of OCC rule changes for filing with the Commission.[5] Under the proposal, the existing requirements governing notice of Board meetings would not apply, and Board meetings could be convened (1) on thirty minutes notice and (2) without any notification of the purpose of the meeting or the business to be transacted.[6]

This proposed emergency provision, if invoked, would suspend the current provisions of Article XI (General Provisions) of the OCC By-laws which, among other things, require an affirmative vote of two-thirds of the directors then in office in order to amend the By-laws. Instead, the proposed rule change will permit the amendment of OCC By-laws and Rules by affirmative vote of the majority of directors (including officers designated as directors) attending the meeting, provided, however, that amendments approved by less than the two-thirds affirmative vote required by Article XI (Amendment of the By-Laws and the Rules) of the By-Laws would remain in effect no longer than thirty days following the termination of the emergency.[7] Lastly, the proposal provides that the Board may establish a hierarchy of the designated officers to exercise any authority set forth in the By-laws and Rules, given to either the Chairman or the President, should either be unavailable at the time of the emergency.[8]

OCC states that this proposed rule change provides it with maximum flexibility to respond to extraordinary situations. OCC further states that such flexibility is necessary so that OCC may continue to serve its clearing membership and the investing public in a timely, orderly and fair fashion.

OCC believes the proposed rule change is consistent with Section 17A of the Act because it is designed to provide a mechanism that, in an emergency situation, will promote the prompt and accurate clearance of securities transactions and will facilitate the protection of Clearing Members and options investors.

[5] Proposed art. III, section 15(c). OCC's Board-approved rule changes still will have to be submitted to the Commission pursuant to section 19(b) of the Act, 15 U.S.C. 78s(b). This proposed rule change, notwithstanding the fact that it is designed to apply in emergency situations, will not alter OCC's filing and other obligations under the Act.

[6] Proposed art. III, section 15(b).

[7] Proposed Art. III, section 15(d).

[8] Proposed Art. III, section 15(e).

B. SRS's Statement on Burden on Competition

The proposed rule change will not have any adverse impact on competition.

C. SRO's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were not solicited with respect to the proposed rule change and none were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds that such longer period is appropriate and publishes its reasons for so finding or (ii) as to which period that the SRO consents, the Commission will:

A. by order approve the proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to File Number SR–OCC–91–08 and should be submitted by August 2, 1991.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–16578 Filed 7–11–91; 8:45 am]

BILLING CODE 8010–01–M

[9] 17 C.F.R. 200.30–3(a)(12).

[Release No. 34–29401; File No. SR–PHILADEP–91–01]

Self-Regulatory Organizations; Philadelphia Depository Trust Company; Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Revisions to Certain Fees Charged to Participants

July 3, 1991.

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b), notice is hereby given that on June 1, 1991, the Philadelphia Depository Trust Company ("PHILADEP") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PHILADEP filed the proposed rule change to revise, effective June 1, 1991, certain fees charged to participants. Attached hereto as Exhibit A is a schedule indicating the changes in the fees.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PHILADEP included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PHILADEP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

PHILADEP's last significant fee change occurred nearly two and one-half years ago. Over this period, costs to provide competitive and technologically advanced services have increased, and reduced trading activity has impacted negatively the revenues of all the nation's clearing and depository organizations, including PHILADEP. The proposed fee revisions are based on two central premises. First, PHILADEP seeks to balance current costs with current

revenues and, accordingly, submits this proposed rule change detailing the fee amendments.

Second, increased and additional fees have been instituted for services, such as Manual Bookentry Delivery/Receive Movements and Manual Interface, which can be performed through computer automation or can be performed manually if a participant so chooses. Historically, PHILADEP has not charged for these manually intensive services, but in order to continue providing such services, PHILADEP seeks to recover its costs. Careful review of these proposed service fees discloses that PHILADEP continues to provide participant specific services at cost effective rates as compared to its competitors' fees. (See service charge revisions #1 and #8 of Exhibit A.)

To remain competitive, PHILADEP has adjusted the Legal Deposit Fees to a schedule of volume related charges to replace the current flat fee of $8.50 per deposit. (See service charge revision #4 of Exhibit A.) By instituting the new fee schedule, PHILADEP can continue to provide cost effective services.

The proposed rule change is consistent with section 17A(b)(3)(D) of the Exchange Act in providing for equitable allocations of reasonable dues, fees, and other charges among participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

PHILADEP does not perceive any burdens on competition as a result of the proposed rule change, which is intended to align more closely the charge for each particular service with the cost of producing it.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

A forthcoming Stock Clearing Corporation of Philadelphia/PHILADEP Member Bulletin will advise members of officials to whom they may direct questions upon receipt of the new fee schedule.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act and subparagraph (e) of the Securities Exchange Act rule 19b–4 because the proposed rule change establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principle office of PHILADEP. All submissions should refer to File No. SR–PHILADEP–91–01 and should be submitted by August 2, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

EXHIBIT A—(NEW TEXT ITALICIZED; DELETED TEXT BRACKETED)

SCHEDULE OF CHARGES EFFECTIVE [OCTOBER 1, 1988] JUNE 1, 1991

Service	Charge
1. Account Charges:	
a. Maintenance Fee	[$260.00] *$360.00* per month with account activity. $150.00 per month for accounts with less than $10.00 of depository activity.
b. Pledge Bank Fee	No Change.
c. Manual Interface Fee	*$150.00 per month in addition to the Maintenance Fee.*
2. Custody Fee	$0.50 each issue, per month. Plus for each 100 shares or $4,000.00 bonds: 0–1 Million Shares—$0.01, 1–5 Million Shares—$0.005. Over 5 Million Shares—$0.0025. *$0.50 additional fee if PHILADEP eligible only.*
3. Deposit Fee	[$1.30] $1.60 per deposit.
4. Legal Deposits	[$8.50 processing fee, plus regular deposit fee; $5.50 per deposit for participants with at least 15,000 deposits per month, with a minimum of 3,000 such deposits being legal deposits, plus regular deposit fee]. *Processing fees are adjusted based on deposit volume.*

Volume Level	*Per Deposit*
0–100	*$8.50*
101–500	*$6.00*
501–1,000	*$5.50*
1,001–1,700	*$5.00*
1,701–2,500	*$4.50*
2,501 and over	*$3.50*

No charge for deposit rejects; transfer agent charges will be passed through on an item for item basis.

5. Withdrawals:	
a. By Transfer	[$2.30] *$2.60* per manual transfer.
	[$1.35] *$1.65* per automated tape transfer.
	[$2.30] *$2.60* per terminal originated transfer.
b. By Certificate	[$12.75] *$17.95* per withdrawal same day or next day.
6. Customer Name Mailing	No change.
7. Accommodation Transfers, Ironclads	No change.
8. MDO Movements:	
a. Automated Bookentry Delivery/Receive	No change.
b. Manual Bookentry Delivery/Receive	[$0.75] *$1.50* per movement.
c. Automatic Bookentry Interdepository Deliveries	No change.
9. CNS/PHILADEP Movements	No change.
10. Underwritings	No change.
11. Pledge Fees	No change.
12. Dividend and Interest payments	[$1.40] *$1.50* per cash credit.
	[$6.00] *$10.00* per stock dividend credit.
13. Deposit Reject Fees	[$7.50] *$10.00* per reject if total rejected deposits are 1% or more of total deposits for the month.
14. Research Fees:	
a. Per photocopy of records	[$2.00] *$4.00*
b. Per microfiche copy	No change.
c. Items less than 90 days old	No change.
d. Items less than 1 year old	No change.
e. Items over 1 year old	No change.
15. Eligibility Book	No change.
16. Stock Loan Program	No change.
17. Reorganization Fees:	
a. Mandatory Exchanges, Cash & Stock Mergers and Reverse Splits	[$20.00] *$23.00* per position.
b. Voluntary Tender offers	[$25.00] *$30.00* per instruction received before cut-off.
	$50.00 per instruction received after cut-off, with authorization.
c. Voluntary conversions	[$25.00] *$30.00* per instruction received before cut-off.
	$50.00 per instruction received after cut-off, with authorization.
d. Redemptions: Stocks, Corporate Bonds, Registered Municipal Bonds, etc.	[$22.00] *$25.00* per position.
18. National Institutional Delivery System (NIDS)	No change.
19. PHILADEP Discount	No change.
20. Computer Tapes or Transmissions	No change.

[FR Doc. 91-16579 Filed 7-11-91; 8:45 am]
BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

July 8, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Arkansas Power & Light Co.
$2.40 Cum. Pfd., $0.01 Par Value (File No. 7-7029),
Bairnco Corp.
Common Stock, $0.01 Par Value (File No. 7-7030),
First Chicago Corp.
10% Cum. Pfd. Series D, No Par Value (File No. 7-7031),
MNC Financial Corp.
Common Stock, $2.50 Par Value (File No. 7-7032),
Morgan Stanley Group, Inc.
9.36% Cum. Pfd., No Par Value (File No. 7-7033),
Safeway, Inc.
Common Stock, $0.01 Par Value (File No. 7-7034),
Societe Nationale Elf Aquitaine
American Depository Shares (File No. 7-7035),
Timberland Co.
Class A Common Stock, $0.01 Par Value (File No. 7-7036),
Universal Health Services, Inc.
Class B Common Stock, $0.01 Par Value (File No. 7-7037),
U.S. Air Group, Inc.
Depository Shares (Representing 1/100 Share of $437.50 Series B Cum. Pfd. Stock) (File No. 7-7038),
USF&G Corp.
$5.00 Series C Cum. Conv. Pfd., $50.00 Par Value (File No. 7-7039),
Value City Department Stores, Inc.
Common Stock, No Par Value (File No. 7-7040),
Vigoro Corp.
Common Stock, $0.01 Par Value (File No. 7-7041).

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 29, 1991, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications

are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–16639 Filed 7–11–91; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

July 8, 1991.

The above named national securities exchange has filed applications with Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Numac Oil & Gas
American Depositary Receipts (File No. 7–7042),
Okiep Copper Co., Ltd.
American Depositary Receipts (File No. 7–7043),
Pacific Europe Growth Fund
Common Stock, $.01 Par Value (File No. 7–7044),
Pioneer Electronic Corp.
American Depositary Receipts (File No. 7–7045),
Portugal Fund
Common Stock, $.01 Par Value (File No. 7–7046),
Potash Corp. of Saskatchewan
American Depositary Receipts (File No. 7–7047),
Prairie Oil Royalties Corp.
American Depositary Receipts (File No. 7–7048),
Quebecor, Ltd.
American Depositary Receipts (File No. 7–7049),
Redlaw Industries, Inc.
American Depositary Receipts (File No. 7–7050),
RIO Algom, Ltd.
American Depositary Receipts (File No. 7–7051),
ROC Taiwan Fund
Common Stock, $.01 Par Value (File No. 7–7052),
Royal Bank of Scotland
American Depositary Receipts (File No. 7–7053),
San Carlos Milling Co.
American Depositary Receipts (File No. 7–7054),
Scandinavia Company
American Depositary Receipts (File No. 7–7055),
Sceptre Resources, Ltd.
American Depositary Receipts (File No. 7–7056),
Scudder New Asia Fund
Common Stock, $.01 Par Value (File No. 7–7057),
Scurry Rainbow Oil, Ltd.
American Depositary Receipts (File No. 7–7058),
Singapore Fund
Common Stock, $.01 Par Value (File No. 7–7059),
Swiss Helvetia Fund
American Depositary Receipts (File No. 7–7060),
TDK Corp.
American Depositary Receipts (File No. 7–7061),
Templeton Global Government, Inc.
Common Stock, $.01 Par Value (File No. 7–7062),
Templeton Global Utility Inc.
American Depositary Receipts (File No. 7–7063),
Transcanada Pipelines Ltd.
American Depositary Receipts (File No. 7–7064),
Turkish Investment Fund
Common Stock, $.01 Par Value (File No. 7–7065),
United Kingdom Fund
Common Stock, $.01 Par Value (File No. 7–7066),
Universal Matchbox Group
American Depositary Receipts (File No. 7–7067),
Western Mining Corp. Holdings
American Depositary Receipts (File No. 7–7068),
Westpac Banking Corp.
American Depositary Receipts (File No. 7–7069),
Worldwide Value Fund
Common Stock, $.01 Par Value (File No. 7–7070).

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 29, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonatahn G. Katz,

Secretary.

[FR Doc. 91–16641 Filed 7–11–91; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

July 8, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Continental Medical Systems, Inc.
Common Stock, $.01 Par Value (File No. 7–7012),
Railroad Financial Corporation
Common Stock, $.10 Par Value (File No. 7–7013),
Conversion Industries, Inc.
Common Stock, No Par Value (File No. 7–7014),
Gulf Canada Resources Limited
Fixed/Adjustable Rate Senior Preference Shares, Series 1, No Par Value (File No. 7–7015),
International Corona Corporation
Class A Subordinating Voting Shares, No Par Value (File No. 7–7016),
Spaghetti Warehouse, Inc.
Common Stock, $.01 Par Value (File No. 7–7017),
Fisher-Price, Inc.
Common Stock, $.01 Par Value (File No. 7–7018),
Fruehauf Trailer Corporation
Common Stock, $.01 Par Value (File No. 7–7019),
General Motors Corp.
Mandatory Redeemable Preferred Stock Series A, $.10 Par Value (File No. 7–7020),
Harley-Davidson, Inc.
Common Stock, $.01 Par Value (File No. 7–7021),
Wesco Financial Corporation
Common Stock, No Par Value (File No. 7–7022),
Property Capital Trust
Shares of Beneficial Interest, No Par Value (File No. 7–7023).

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 29, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is

consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-16640 Filed 7-11-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

July 8, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Spaghetti Warehouse, Inc.
Common Stock, $0.01 Par Value (File No. 7-7024)
Nuveen California Select Quality Municipal Fund
Common Stock, No Par Value (File No. 7-7025)
Nuveen New York Select Quality Municipal Fund
Common Stock, No Par Value (File No. 7-7026)
Royal Bank of Scotland
Ordinary Shares, 25p Par Value (File No. 7-7027)
General Motors Corporation
Mandatory Redeemable Preference Stock, Series A $0.10 Par Value (File No. 7-7028).

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 29, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privilieges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-16642 Filed 7-11-91; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-7833]

Issuer Delisting; Application to Withdraw From Listing and Registration (CBI Industries, Inc., Common Stock, $2.50 Par Value)

July 8, 1991.

CBI Industries, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and rule 12d2-2(d) promulgated thereunder to withdraw its Common Stock from listing and registration on the Pacific Stock Exchange, Inc. ("PSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

CBI Industries, Inc. ("Company") is requesting the withdrawal of its listing and registration on the PSE because it is unnecessary. The Common Stock is listed on the New York Stock Exchange ("NYSE"), and there is very low trading volume of the Common Stock on the PSE. According to the Company, in 1990, the composite trading volume was about 13,700,000, of which 11,421,200 shares were traded on the NYSE. This is a composite daily average of 54,000 shares per day (45,322 shares per day on the NYSE). On the PSE, however, trading volume in 1990 was only 204,234 shares, which is an average daily volume of 810 shares. The Company believes that the costs of continuing listing with the PSE exceed any benefit to the Company and its shareholders.

Any interested person may, on or before July 29, 1991 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the PSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-16643 Filed 7-11-91; 8:45 am]

BILLING CODE 8010-01-M

TENNESSEE VALLEY AUTHORITY

Colbert-Cullman 161-kV Transmission Line Tap to Addison

AGENCY: Tennessee Valley Authority.

ACTION: Notice of no practicable alternative to impacting wetlands.

SUMMARY: TVA is proposing to construct a 161-kV electric power transmission line from a tap point on TVA's Colbert-Cullman 161-kV transmission line in Lawrence County, Alabama, to a new substation to be constructed by Cullman Electric Cooperative (EC) at Addison, Alabama. An environmental assessment, in accordance with the National Environmental Policy Act, is being prepared. This proposal will result in the disturbance of about 2.5 acres of wetlands; however, it has been determined that no practicable alternative exists. TVA is requesting public comment on the impact to wetlands.

DATES: TVA will consider all relevant comments received by July 26, 1991 before a final decision is made on the proposal.

ADDRESSES: Any comments on this proposal should be addressed to M. Paul Schmierbach, Manager, Environmental Quality Staff, Tennessee Valley Authority, 400 W. Summit Hill Drive, SPB 2P, Knoxville, Tennessee 37902-1499.

FOR FURTHER INFORMATION CONTACT: For additional information on this action, call M. Paul Schmierbach, Manager, Environmental Quality Staff, Tennessee Valley Authority at (615) 632-6578.

SUPPLEMENTARY INFORMATION: TVA evaluated two electrical alternatives in addition to the proposed action and no action. The two alternatives each involved 7.5 miles of new TVA transmission line and additional work by Cullman EC and offered no significant environmental or economic advantages over the proposed action. An alternate route to the proposed route was also evaluated but was rejected due to land use conflicts and because it crossed a more rugged portion of Rock Creek and Long Branch drainage areas.

The overall length of the proposed route is 9.3 miles. The line will be built on a 100-foot-wide right-of-way using H-frame construction. Therefore, 110 acres of new right-of-way will have to be acquired. Most of these areas are made up of hardwoods with some pine. The nonwooded areas are open pasture lands. It may be that trees growing in the bottoms of some steep ravines can be left in place since the conductors will be high above them.

The only wetland areas identified along this line route are the crossings of Rock Creek, Indian Creek, and their tributaries. These streams are relatively fast flowing with narrow floodplains. The transmission line will impact 2.5 acres of temporarily flooded palustrine forested wetlands at these stream crossings.

TVA has concluded there is no practicable alternative to impacting these wetlands. There are no feasible alternative routes which would avoid these or similar areas. In order to minimize impacts, TVA will take the following steps:

(1) For those areas identified as wetlands, streams and drainageways will not be modified so as to change the natural hydrological patterns;

(2) Areas of naturally occurring hydric soils will not be removed or disturbed in any way that would destroy or alter their hydrological properties;

(3) Areas of identified forested wetlands will be hand-cleared only to the extent necessary to allow the construction and safe operation of the transmission line;

(4) Where trees are removed and cut within identified wetland areas or along streams, remaining stumps will not be uprooted or removed;

(5) Future right-of-way maintenance will avoid the use of heavy equipment or chemicals and will be conducted during dry periods whenever possible.

Dated: July 2, 1991.

M. Paul Schmierbach,

Manager, Environmental Quality.

[FR Doc. 91-16573 Filed 7-11-91; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program; Palwaukee Municipal Airport, Wheeling/Prospect Heights, IL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Palwaukee Municipal Airport Commission under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On July 26, 1988, the FAA determined that the noise exposure maps submitted by the Palwaukee Municipal Airport Commission under part 150 were in compliance with applicable requirements. On May 29, 1991, the Assistant Administrator for Airports approved the Palwaukee Municipal Airport noise compatibility program as supplemented and clarified in the airport operator's October 26, 1990 and March 8, 1991 submittals.

A total of nineteen (19) measures are included in the Palwaukee Municipal Airport Commission's recommended program. Six are listed as Noise Abatement Measures, nine are listed and Land Use Management Measures and four are Other Implementation Measures (Continuing Planning). The FAA has approved fifteen measures, disapproved two measures pending submittal of additional information, disapproved one measure for purposes of part 150 and disapproved one measure outright.

EFFECTIVE DATE: The effective date of the FAA's approval of the Palwaukee Municipal Airport noise compatibility program is May 29, 1991.

FOR FURTHER INFORMATION CONTACT: Jerri L. Horst, Federal Aviation Administration, Great Lakes Region, Chicago Airports District Office, CHI-ADO-640.8, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (312) 694-7524. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Palwaukee Municipal Airport, effective May 29, 1991.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types of classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are

eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Chicago Airports District Office in Des Plaines, Illinois.

The Palwaukee Municipal Airport Commission submitted to the FAA on November 17, 1987, noise exposure maps, descriptions and other documentation. This documentation was produced during the Airport Noise Compatibility Planning (part 150) Study at Palwaukee Municipal Airport from November 1984 through May 1991. The Palwaukee Municipal Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on July 26, 1988. Notice of this determination was published in the **Federal Register** on August 11, 1988.

The Palwaukee Municipal Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 2006. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on November 30, 1990 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period would have been deemed to be an approval of such program.

The submitted program was supplemented and clarified by the airport operator's October 26, 1990 Response to FAA's Consolidated Comments, Addenda and Errata, Set up File and Echo Report 1992 Noise Compatibility Plan, and in the airport operator's March 8, 1991 letter regarding Land Use Management Measures LU–8 and LU–9. The program contained nineteen (19) proposed measures for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Assistant Administrator for Airports effective May 29, 1991.

Six of the nineteen measures submitted were listed as "Noise Abatement Measures". Four of these noise abatement measures were approved. They dealt with thrust cut back procedures, altering flight tracks, prohibiting nighttime runups and orienting aircraft away from noise sensitive land uses when using the taxi hold apron. However two measures were disapproved pending submission of additional information. One of these called for establishing a nighttime noise level maximum. The other proposed building a partial taxiway to reduce the amount of time aircraft spent taxiing. Nine of the nineteen measures submitted are listed as "Land Use Management Measures", of which seven were approved outright. Of these seven land use measures, five are preventive measures that include adopting the part 150 NCP as a comprehensive plan element, adopting guidelines for discretionary review, adopting a fair disclosure policy, establishing compatible use rezoning and adopting noise overlay zoning. Two other of these seven land use management measures are corrective measures such as acquiring or urging others to acquire and redevelop noise impacted dwellings. Two additional land use management measures were disapproved, one for purposes of part 150 because the rezoning called for in the measure did not conform to the statutory and regulatory criteria of reducing or preventing noncompatible land uses within the area covered by the noise exposure map. The other, which called for the construction of a noise barrier-fence was disapproved outright because it would penetrate the FAR part 77 primary surface. Finally, four measures, "Other Implementation Measures" dealing with continuing planning were also approved outright. These determinations are set forth in detail in a Record of Approval endorsed by the Assistant Administrator for Airports on May 29, 1991. The Record of Approval, as well as other evaluation materials and documents which comprised the submittal to FAA are available for review at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., room 617 Washington, D.C. 20591.

Federal Aviation Administration, Great Lakes Region, 2300 East Devon Avenue, room 261, Des Plaines, Illinois 60018.

Federal Aviation Administration, Chicago Airports District Office, Great Lakes Region, 2300 East Devon Avenue, room 258, Des Plaines, Illinois 60018.

Palwaukee Municipal Airport Commission, Palwaukee Municipal Airport, 1120 S. Milwaukee Ave., Hangar #1, Wheeling, Illinois 60090.

Village of Wheeling, 255 West Dundee Road, Wheeling, Illinois 60090.

City of Prospect Heights, 4 East Camp McDonald Road, Prospect Heights, Illinois 60070.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Des Plaines, Illinois, July 2, 1991.

Louis H. Yates,

Manager, Chicago Airports District Office, Great Lakes Region.

[FR Doc. 91–16606 Filed 7–11–91; 8:45 am]

BILLING CODE 4910–13–M

Index of Administrator's Decisions and Orders in Civil Penalty Actions; Publication

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of publication.

SUMMARY: This notice constitutes the required quarterly publication of an index of the Administrator's decisions and orders in civil penalty cases. The FAA is publishing an index by order number, a subject-matter index, and case digests that contain identifying information about the final decisions and orders issued by the Administrator. These indexes and digests will increase the public's awareness of the Administrator's decisions and orders and will assist litigants and practitioners in their research and review of decisions and orders that may have precedential value in a particular civil penalty action. Publication of the index by order number ensures that the agency is in compliance with statutory indexing requirements.

FOR FURTHER INFORMATION CONTACT: James S. Dillman, Assistant Chief Counsel for Litigation (AGC–400), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591: telephone (202) 267–3661.

SUPPLEMENTARY INFORMATION: The Administrative Procedure Act requires Federal agencies to maintain and make available for public inspection and copying current materials that contain identifying information as to those materials required to be made available or published. 5 U.S.C. 552(a)(2). In a notice issued on July 11, 1990, and published in the **Federal Register** (55 FR 29148; July 17, 1990), the FAA announced the public availability of several indexes and summaries that provide identifying information about the final decisions and orders issued by the Administrator pursuant to the FAA's civil penalty assessment authority and the rules of

practice governing hearings and appeals of civil penalty actions. 14 CFR part 13, subpart G. The FAA maintains an index of the Administrator's decisions and orders in civil penalty actions organized by order number and containing identifying information about each decision or order. The FAA also maintain a subject-matter index, and digests organized by order number of the Administrator's final decisions and orders in civil penalty cases. In a notice issued on October 26, 1990, the FAA published the indexes and digests herein described for all decisions and orders issued by the Administrator through September 30, 1990. 55 FR 45984; October 31, 1990. The FAA announced in that notice that it would publish supplements to these indexes and digests on a quarterly basis (i.e., in January, April, July, and October of each year). Only the subject-matter index will be published cumulatively. Both the order number index and the digests will be non-cumulative.

In a notice issued on January 25, 1991, the FAA published the first supplement to the indexes and digests herein described, which included the decisions and orders issued by the Administrator from October 1 through December 31, 1990. 56 FR 4886; February 6, 1991. In a notice issued on May 1, 1991, the FAA published the second supplement, which included decisions and orders issued by the Administrator from January 1, 1991 through March 31, 1991. 56 FR 20250; May 2, 1991.

As noted at the beginning of each of these documents, these indexes and digests do not constitute legal authority, and should not be cited or relied upon as such. The indexes and digests are not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context. The Administrator's final decisions and orders, indexes, and digests are available for public inspection and copying at all FAA legal offices. [The addresses of the FAA legal offices are listed at the end of this notice.]

Civil Penalty Actions—Decisions and Orders Issued by Administrator

Index by Order Number

[This supplement includes decisions and orders issued by the Administrator from April 1, 1991 through June 30, 1991.]

This index does not constitute legal authority, and should not be cited or relied upon as such. This index is not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

Order No. (service date)	Name and docket No.	Regulations discussed (14 CFR)
91-6 (4/10/91)	Ora L. Lowery, CP90SO0239	
91-7 (4/10/91)	Robert T. Pardue, CP90SO0161	13.233(c), (d)(2).
91-8 (4/11/91)	Watts Agricultural Aviation, CP89WP0148	13.220(n); 13.233(j)(3); 43.9(a); 43.15(a); 91.29(a); 91.173(a)(2)(v); (vi).
91-9 (4/12/91)	Continental Airlines, CP89NM0037; CP89NM0052; CP89NM0057	13.16(d); 108.5(a)(1).
91-10 (4/11/91)	Craig A. Graham, CP90NM0146	13.233; 107.21(a)(1),
91-11 (4/11/91)	Continental Airlines, CP89SW0038; CP89EA0049; CP89EA0034; CP89SW0046.	part 13; 13.233(c).
91-12 (4/12/91)	Ronald C. Terry and Christopher J. Menne, CP89SO0491; CP89SO0490	1.1 (Operate); 13.233; 91.9; 91.75(b); 91.87(h).
91-13 (4/19/91)	Jeffrey Glenn Kreamer, CP89NM0009	
91-14 (5/24/91)	Carol Ann Swanton, CP90NM0235	
91-15 (5/24/91)	Richard X. Knipe, CP90EA0293	
91-16 (5/28/91)	Hiram Lopez, CP90EA0007	
91-17 (5/30/91)	KDS Aviation, CP90WP0196	13.205(a), (b); 13.217(f); 13.220(n); 14.01; 14.04.
91-18 (6/3/91)	[Airport Operator], CP89**0476	13.16(a)(1); 107.13(a)(1).
91-19 (6/4/91)	Marcia Bayer, CP89SO0310	
91-20 (6/4/91)	Richard A. Bargen, CP90WP0183	13.233(c), (d)(2).
91-21 (6/10/91)	Britt Airways, CP89SW0392	
91-22 (6/13/91)	Omega Silicone Company, 87-152(HM)	
91-23 (6/14/91)	Continental Airlines, Inc., CP89EA0034; CP89SW0038; CP89SW0046; CP89EA0049.	
91-24 (6/21/91)	William John Esau, CP91SO0188	13.211(a); 13.233(c).

Civil Penalty Actions Decisions and Orders Issued by the Administrator

Subject Matter Index

[This cumulative index includes all decisions and orders issued by the Administrator as of June 30, 1991.]

This index does not constitute legal authority, and should not be cited or relied upon as such. This index is not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

13.233	89-1 Gressani; 89-4 Metz; 89-5 Schultz; 89-7 Zenkner; 89-8 Thunderbird Accessories; 90-3 Metz; Thunderbird accessories;90-19 Continental Airlines; 90-20 Degenhardt; 90-25 & 90-27 Gabbert; 90-35 P. Adams; 90-19 Continental Airlines; 90-39 Hart; 91-2 Continental Airlines; 91-3 Lewis; 91-7 Pardue; 91-8 Watts Agricultural Aviation; 91-10 Graham; 91-11 Continental Airlines; 91-12 Bargen; 91-24 Esau.
13.234	90.19 Continental Airlines; 90-31 Carroll; 90-32 Continental Airlines; 90-38 Continental; 91-4 [Airport Operator].
13.235	90-11 Thunderbird Accessories; 90-12 Continental Airlines 90-15 Playter; 90-17 Wilson.
14.01	91-17 KDS Aviation.
14.04	91.17 KDS Aviation.
14.05	90-17 Wilson.
43.9(a)	91-8 Watts Agricultural Aviation.
43.13	90-11 Thunderbird Accessories.
43.15	90-25 & 90-27 Gabbert; 91-8 Watts Agricultural Aviation.
91.9 (91.13 as of 8/18/90)	90-15 Playter; 91-12 Terry & Menne.
91.29 (91.7 as of 8/18/90)	91-8 Watts Agricultural Aviation.
91.75 (91.123 as of 8/18/90)	91-12 Terry & Menne.
91.79 (91.119 as of 8/18/90)	90-15 Playter.
91.87 (91.129 as of 8/18/90)	91-12 Terry & Menne.
91.173 (91.417 as of 8/18/90)	91-8 Watts Agricultural Aviation.
107.1	90-19 Continental Airlines; 90-20 Degenhardt; 91-4 [Airport Operator].
107.13	90-12 Continental Airlines; 90-19 Continental Airlines; 91-4 [Airport Operator]; 91-18 [Airport Operator].
107.20	90-24 Bayer.
107.21	89-5 Schultz; 90-10 Webb; 90-22 Degenhardt; 90-23 Broyles; 90-26 & 90-43 Waddell; 90-33 Cato; 90-39 Hart; 91-3 Lewis; 91-10 Graham.
108.5	90-12 Continental Airlines; 90-18 Continental Airlines; 90-19 Continental Airlines; 91-2 Continental Airlines; 91-9 Continental Airlines.
108.7	90-18 Continental Airlines; 90-19 Continental.
108.11	90-23 Broyles; 90-26 Waddell; 91-3 Lewis.
108.13	90-12 Continental Airlines; 90-19 Continental Airlines; 90-37 Northwest.
121.133	90-18 Continental Airlines.
121.367	90-12 Continental Airlines.
135.87	90-21 Carroll
145.53	90-11 Thunderbird Accessories.
145.61	90-11 Thunderbird Accessories.
191	90-12 Continental Airlines; 90-19 Continental Airlines; 90-37 Northwest Airlines.
302.8(c)	90-22 USAir.
49 CFR	
821.33	90-21 Carroll.

Statutes

5 U.S.C.	
504	90-17 Wilson; 91-17 KDS Aviation.
552	90-12 Continental Airlines; 90-18 Continental Airlines; 90-19 Continental Airlines.
554	90-18 Continental Airlines; 90-21 Carroll.
556	90-21 Carroll.
557	90-20 Degenhardt; 90-21 Carroll; 90-37 Northwest Airlines.
11 U.S.C.:	
362	91-2 Continental Airlines.
28 U.S.C.:	
2462	90-21 Carroll.
49 U.S.C. App.:	
1356	90-18 Continental Airlines; 90-19 Continental Airlines; 91-2 Continental Airlines.
1357	90-18 Continental Airlines; 90-19 Continental Airlines; 91-2 Continental Airlines.
1471	89-5 Schultz; 90-10 Webb; 90-20 Degenhardt; 90-12 Continental Airlines; 90-18 Continental Airlines; 90-19 Continental Airlines; 90-23 Broyles; 90-26 & 90-43 Waddell; 90-33 Cato; 90-37 Northwest Airlines; 90-39 Hart; 91-2 Continental Airlines; 91-3 Lewis; 91-18 [Airport Operator].
1475	90-20 Degenhardt; 90-0012 Continental Airlines; 90-18 Continental Airlines; 90-19 Continental Airlines; 91-2 Continental Airlines; 91-3 Lewis; 91-18 [Airport Operator].
1486	90-21 Carroll.

Civil Penalty Actions Decisions and Orders Issued by the Administrator

Digests

(This supplement includes decisions and orders issued by the Administrator from April 1, 1991 through June 30, 1991.)

These digests do not constitute legal authority, and should not be cited or relied upon as such. These digests are not intended to serve as a substitute for proper legal research. Parties, attorneys and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

In the Matter of Oral L. Lowery

Order No. 91–6 (4/10/91)

Withdrawal of Appeal

Complainant withdrew its notice of appeal of the oral initial decision. Complainant's appeal is dismissed.

In the Matter of Robert T. Pardue

Order No. 91–7 (4/10/91)

Failure to Perfect Appeal

Respondent failed to perfect his appeal by filing an appeal brief in accordance with 14 CFR 13.233(c). Respondent's appeal is subject to dismissal under 14 CFR 13.233(d)(2).

In the Matter of Watts Agricultural Aviation, Inc.

Order No. 91–8 (4/11/91)

ALJ held that Respondent violated 14 CFR 91.29(a) by operating an unairworthy aircraft and 14 CFR 91.173(a) by failing to keep appropriate maintenance and inspection records.

Recordkeeping

The Administrator affirmed the ALJ's finding that Respondent violated 14 CFR 91.173(a)(2)(v) because the AD (Airworthiness Directives) notes were incomplete. The revision numbers of the ADs with which Respondent had complied and the method of compliance with one AD were not included. That Respondent may have actually complied with the ADs does not relieve Respondent of its responsibility under § 91.173(a) to maintain complete records.

Recordkeeping.

The Administrator affirmed the ALJ's finding that FAA Form 337 reflecting the propeller modification should have been kept by Respondent. A yellow tag is not a permanent record, and the regulations do not permit the use of a yellow tag as a substitute for FAA Form 337. The Administrator also found it incredible that Respondent may have been unaware of the propeller repair. The fact that there had been a yellow tag for this repair suggests that Respondent knew about the repair. The Administrator also rejected Respondent's attempt to shift responsibility for this violation to the repair station which performed the modification because the responsibility to maintain FAA Form 337 belongs to the owner or operator, not to the repair station.

Airworthiness

The ALJ's finding that the safe-life of the wing carry-through structure was exceeded by 754 hours is affirmed. The type certificate data sheet provides that the wing carry-through structure is life-limited at 5000 hours; the life-limit can be extended if the wing is modified in compliance with a particular service letter. Respondent did not modify the wing carry-through structure, and the tachometer indicated that the aircraft had been in operation for 5754 hours. Respondent argued that because the tachometer recorded time faster than clock hours at certain engine speeds and slower at other engine speeds, the aircraft had actually been in operation less than 5000 hours. The Administrator found that there is no accurate way to determine what the correct number of hours would be because the actual engine speeds during the aircraft's operation had not been established and because Respondent had no separate system of recording time. Hence, Respondent failed to rebut Complaint's *prima facie* case.

For purposes of complying with maintenance requirements, operators must select a method of determining time of operation and then must adhere to it. Accurate recordkeeping is the linchpin behind the FAA's regulatory scheme, and FAA inspectors must be able to determine from a review of the records whether required maintenance has been performed on a timely basis. If an operator has been using a tachometer to record time in operation, and the operator has been using that method to determine when to do its required maintenance and inspections, it cannot use as a defense that it was not required to perform certain maintenance because its tachometer is inaccurate.

Airworthiness

The preponderance of the evidence supports the ALJ's finding that there was no readable fuel placard next to the fuel filter caps as required by the aircraft's type certificate data sheet. The Administrator agreed with the ALJ's findings that "[o]ne failing to observe the placard 'on' the fuel access cap would undoubtedly notice it 'next to' the cap had it been placed there as required."

Airworthiness

As a result of the fact that the safe-life of the wing carry-through structure was exceeded and that the required fuel placards were missing, Respondent was operating an unairworthy aircraft, and therefore, was in violation of 14 CFR 91.29(a). An aircraft is airworthy when (1) it conforms to its type design or supplemental type design and to applicable ADs, and (2) is in a condition for safe operations. 49 U.S.C. App. 1423(c).

Collateral Estoppel

Respondent argued that Complainant was collaterally estopped from bringing this action against it by a non-appealed initial decision rendered by an ALJ in favor of a mechanic employed by Respondent. This argument is rejected because if the Administrator were collaterally estopped by an unappealed initial decision of an ALJ in a case against another party, that would result in giving precedential value to that initial decision, contrary to 14 CFR 13.233(j)(3). Collateral estoppel is also inapplicable because the issues in the two cases were not identical, and Respondent and its mechanic cannot be considered to be privies.

Also, Complainant was not collaterally estopped from pursuing this action by a voluntarily withdrawn complaint filed against another one of Respondent's mechanics because the case was not actually litigated and the order of dismissal did not contain any findings.

In the Matter of Continental Airlines

Order No. 91–9 (4/12/91)

ALJ held that Respondent violated 14 CFR 108.5(a)(1) by failing to carry out a provision of the SSP which Respondent adopted by not detecting FAA-approved test objects at specified security checkpoints at three separate airports during no-notice tests. Respondent's arguments on appeal have been addressed in these FAA orders: No. 90–12 (4/25/90); No. 90–18 (8/22/90); No. 90–19 (11/7/90). In light of the fact that there are no new issues, and the facts are similar, Respondent's appeals are denied.

In the Matter of Craig Alvin Graham

Order No. 91–10 (4/11/91)

Appeal.

The ALJ had granted Complainant's Motion to Limit the Hearing to the Issue of Sanction because Respondent did not

dispute the facts. Respondent did not appear at the hearing and the ALJ granted Complainant's Motion for Decision. The ALJ also issued a separate Notice of Decision, informing Respondent that the allegations contained in the Complaint had been affirmed. Respondent filed a document which appears to be a late-filed Notice of Appeal, in which he mentioned that he had never received notice of the hearing date. Respondent did not perfect that appeal by filing an appeal brief. Rather than dismiss the appeal summarily, the Administrator issued an order to show cause why this appeal should not be dismissed. The Administrator explained that the only issue to be addressed in the response to the Order to Show Cause are: (1) Whether good cause exists to excuse the late-filing of Respondent's notice of appeal, and (2) if so, whether good cause exists to excuse Respondent's failure to perfect the appeal by filing a separate appeal brief in a timely fashion.

In the Matters of Continental Airlines

Order No. 91–11 (4/11/91)

Motion to Vacate Default Judgment.

After filing a Notice of Appeal, Respondent filed a motion to vacate the default judgment rendered by the ALJ, asserting that the ALJ had exceeded his authority. The Rules of Practice do not provide for a motion to vacate a default judgment. It is unclear: why Respondent elected to file this motion rather than to simply prepare and file an appeal brief; why Complainant's counsel moved for judgment in his opposition to Respondent's motion for continuance of the hearing dates; and why the ALJ granted the default judgments rather than to deny Respondent's motion, convene the hearing and put Respondent to the test of appearing at the hearing and defending the cases. As a means of bringing this matter back within the confines of the Rules of Practice, Respondent's motion to vacate the default judgments and to remand for a hearing will be treated as an appeal brief and Complainant is ordered to respond to that brief within 35 days of this Order.

In the Matter of Ronald C. Terry and Christopher J. Menne

Order No. 91–12 (4/12/91)

The ALJ held that Respondents did not violate 14 CFR 91.75(b), 91.87(h), and 91.9 when they acknowledged a clearance for immediate takeoff which was not intended for them and then moved onto the runway in preparation for takeoff. The ALJ held that the local controller's failure to inform Respondents that the clearance was not for them exonerated Respondents from the alleged violations.

Standard of Proof

The ALJ was in error when he required Complainant to establish its case beyond a reasonable doubt, because the Rules of Practice provide that the party with the burden of proof shall prove its case by a preponderance of reliable, probative, and substantial evidence. 14 CFR 13.223.

ATC Error

The Administrator finds that Respondents did violate § 91.75(b) because to the extent that the local controller should have corrected Respondents' acknowledgment, the ATC failure only serves to mitigate an otherwise appropriate sanction. The local controller's error was not the primary initiating factor. The local controller would not have had to correct the acknowledgment if Respondent had not taken the wrong clearance.

Operate

The ALJ held that Respondents did not violate § 91.87(h) (operating an aircraft on a runway without appropriate ATC clearance) because Respondents did not continue their takeoff roll once they saw another aircraft on the runway. The Administrator held that the ALJ's interpretation of aircraft operation in this case is clearly contrary to established case law, citing *Daily* v. *Bond*, 623 F.2d 624 (9th Cir. 1980).

Careless or Reckless

While the Administrator agrees with the ALJ that Respondents acted properly in stopping their aircraft once they saw the other aircraft further down the runway, they nonetheless acted in a careless or reckless manner by failing to listen attentively to the clearance issued by the local controller. It goes without saying that it is inherently dangerous for a pilot to accept a takeoff clearance directed to another aircraft. Proof of actual danger is unnecessary to establish a violation of 14 CFR § 91.9, citing *Haines* v. *DOT*, 449 F.2d 1073 (D.C. Cir. 1971).

In the Matter of Jeffrey Glenn Kreamer

Order No. 91–13 (4–19–91)

Withdrawal of Appeal

Complainant withdrew its notice of appeal of the oral initial decision. Complainant's appeal is dismissed.

In the Matter of Carol Ann Swanton

Order No. 91–14 (5/24/91)

Withdrawal of Appeal

Complainant withdrew its notice of appeal of the oral initial decision. Complainant's appeal is dismissed.

In the Matter of Richard X. Knipe

Order No. 91–15 (5/24/91)

Withdrawal of Appeal

Complainant withdrew its notice of appeal of the oral initial decision. Complainant's appeal is dismissed.

In the Matter of Hiram Lopez

Order No. 91–16 (5/28/91)

Withdrawal of Appeal

Complainant withdrew its notice of appeal from the oral initial decision. Complainant's appeal is dismissed.

In the Matter of KDS Aviation

Order No. 91–17 (5/30/91)

Complainant failed to respond to Respondent's requests for discovery. Respondent filed a motion for monetary sanctions against Complainant. Soon afterwards, Complainant filed a motion withdrawing the complaint and requesting dismissal of the case. [Complainant's motion was not prompted by Respondent's motion for monetary sanctions.] The ALJ dismissed the case and ordered Complainant to pay Respondent $937.50 to cover attorney fees and costs attributable to efforts to attempt to get Complainant to respond to discovery. The Administrator reverses the ALJ's order to the extent it awarded attorney fees and costs.

Discovery

The Administrator considers Complainant's failure to respond to be both imprudent and an abuse of the discovery process. While the Administrator does not condone Complainant's action—or inaction—in this matter, he grants Complainant's appeal because the ALJ lacked the authority to grant the motion for sanctions. Section 13.205(b) of the Rules of Practice, 14 CFR 13.205(b), specifically prohibits an ALJ from awarding costs to any party.

Section 13.220(n), 14 CFR 13.220(n), provides for non-monetary sanctions when a party fails to comply with a motion to compel discovery. It would have been inappropriate for the ALJ to have used those sanctions because Complainant withdrew the complaint, and the ALJ had not issued an order to compel.

EAJA

A party may only recover attorney fees and other expenses through an application under the EAJA and 14 CFR pt. 14.

Deference to ALJ

The Administrator need not defer to an *ultra vires* act of any ALJ.

Federal Rules of Civil Procedure

Although the Federal Rules of Civil Procedure may be looked to for guidance, they do not supercede part 13's provisions.

In the Matter of [Airport Operator]

Order No. 91–18 (6/3/91)

Respondent appealed from the law jduge's holding that it violated 14 CFR 107.13(a) by failing to use the procedures in its approved security program to control access to its air operations area (AOA). Respondent's manager of airport operations admitted that its contractor's action in leaving the area unattended while the door was propped open was not in compliance with Respondent's approved security program. Respondent contends on appeal that it is being held strictly liable for the security breach, that Complainant was required to consider corrective action Respondent took after the incident, and that Complainant's alleged failure to provide specific notice that civil penalties might be imposed as a result of the CASNAIP inspection should bar this action.

Strict Liability

The fact that the door was propped open while it was unattended is clear evidence that the security program was not implemented adequately so as to control unauthorized access to the AOA. Hence this is not a case of liability without fault. Respondent is responsible for ensuring that its contractors do not allow unauthorized access to the AOA.

Corrective Action

While it may be appropriate in certain instances to consider corrective action in determining what, if any, civil penalty is appropriate for a discrepancy discovered during a CASNAIP inspection, it clearly does not follow that the performance of corrective action exonerates the violator in every case. Moreover, the law judge in this case did take Respondent's corrective action into consideration when he reduced the civil penalty. The Administrator makes no findings as to whether airport management's "reinforcement" of pre-existing security procedures with the contractor constitutes a *bona fide* corrective action, or whether evidence on that point was sufficient to warrant the law judge's reduction of the civil penalty.

Lack of Notice

Sections 901(a) and 905(a) of the Federal Aviation Act (49 U.S.C. App. 1471(a) and 1475(a)) and 14 CFR 13.16(a)(1) provide adequate notice that a violation of the FAR can result in a civil penalty. No further notice to Respondent was required.

In the Matter of Maricia J. Bayer

Order No. 91–19 (6/4/91)

Withdrawal of Appeal

Complainant withdrew its notice of appeal from the oral initial decision. Complainant's appeal is dismissed.

In the Matter of Richard A. Bargen

Order No. 91–20 (6/4/91)

Failure to Perfect Appeal

Respondent failure to perfect his appeal by filing an appeal brief in accordance with 14 CFR 13.233(c). Respondent's appeal is dismissed pursuant to § 13.233(d)(2).

In the Matter of Britt Airways, Inc.

Order No. 91–21 (6/10/91)

Withdrawal of Appeal

Complainant withdrew its notice of appeal from the oral initial decision. Complainant's appeal is dismissed.

In the Matter of Omega Silicone Co.

Order No. 91–22 (6/13/91)

Withdrawal of Appeal

Complainant withdrew its notice of appeal from the oral initial decision. Complainant's appeal is dismissed.

In the Matter of Continental Airlines, Inc.

Order No. 91–23 (6/14/91)

Withdrawal of Appeal

Respondent withdrew its notices of appeal with the written initial decision. Respondent's appeal is dismissed.

In the Matter of William J. Esau

Order No. 91–24 (6/21/91)

Late-Filed Appeal Brief

Complainant timely served its brief Respondent but mistakenly sent the original and copies intended for the FAA Appellate Docket Clerk to the NTSB. Held: clerical error that resulted in Complainant's late-filed brief constitutes good cause to excuse the untimeliness. Complainant's Motion to Accept Late-Filled Brief is granted.

The Administrator's final decisions and orders, indexes, and digests are available for public inspection and copying at the following location in FAA headquarters:

FAA Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW., room 924A, Washington, DC 20591: (202) 267–3641.

In addition, these materials are available at all FAA regional and center legal offices at the following locations:

Office of the Assistant Chief Counsel for the Aeronautical Center (AAC–7), Mike Monroney Aeronautical Center, 6500 South MacArthur, Oklahoma City, OK 73125; (405) 680–3296.

Office of the Assistant Chief Counsel for the Alaskan Region (AAL–7), Alaskan Region Headquarters, 222 West 7th Avenue, Anchorage, AL 99513; (907) 271–5269.

Office of the Assistant Chief Counsel for the Central Region (ACE–7), Central Region Headquarters, 601 East 12th Street, Federal Building, Kansas City, MO 64106; (816) 426–5446.

Office of the Assistant Chief Counsel for the Eastern Region (AEA–7), Eastern Region Headquarters, JFK International Airport, Fitzgerald Federal Building, Jamaica, NY 11430; (718) 917–1035.

Office of the Assistant Chief Counsel for the Great Lakes Region (AGL–7), Great Lakes Region Headquarters, O'Hare Lake Office Center, 2300 East Devon Avenue, Des Plaines, IL 60018; (312) 694–7108.

Office of the Assistant Chief Counsel for the New England Region (ANE–7), New England Region Headquarters, 12 New England Executive Park, Burlington, MA 01803; (617) 273–7310.

Office of the Assistant Chief Counsel for the Northwest Mountain Region (ANM–7), Northwest Mountain Region Headquarters, 18000 Pacific Highway South, Seattle, WA 98188; (206) 227–2007.

Office of the Assistant Chief Counsel for the Southern Region (ASO–7), Southern Region Headquarters, 3400 Norman Berry Drive, East Point, GA 30344; (404) 763–7204.

Office of the Assistant Chief Counsel for the Southwest Region (ASW–7) Southwest Region Headquarters, 4400 Blue Mound Road, Fort Worth, TX 76193; (817) 624–5707.

Office of the Assistant Chief Counsel for the Technical Center (ACT–7), Federal Aviation Administration Technical Center, Atlantic City International Airport, Atlantic City, NJ 08405; (609) 484–6605.

Office of the Assistant Chief Counsel for the Western-Pacific Region (AWP–7), Western-Pacific Region Headquarters, 15000 Aviation Boulevard, Hawthorne, CA 90261; (213) 297–1270.

The FAA still is pursuing means by which the Administrator's decisions and orders, and the indexes and digests of those decisions, could be published and offered for sale by subscription through a reporting service. The FAA intends to provide further notice regarding such publication and sale in the **Federal Register** when the necessary arrangements are complete. The FAA may discontinue publication of the subject-matter index and the digests at such time as a commercial reporting service publishes similar information and provides it to the public in a timely and accurate manner.

Issued in Washington, DC, on July 3, 1991.

Kenneth P. Quinn,

Chief Counsel.

[FR Doc. 91–16607 Filed 7–11–91; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 91–14; Notice 2]

Mosler Auto Care Center, Inc.; Grant of Petition for Temporary Exemption From Standard No. 208

This notice grants the petition by Mosler Auto Care Center, Inc. of Riviera Beach, Fla., dba Consulier Industries, for a temporary exemption for its Consulier GTP passenger car from the passive restraint requirements of Federal Motor Vehicle Safety Standard No. 208 Occupant Crash Protection. The basis of the petition was that compliance would cause it substantial economic hardship.

Notice of the petition was published on April 18, 1991, and an opportunity afforded for comment (56 FR 15956).

On March 31, 1990, Consulier Industries, Inc., of Riviera Beach, Fla., sold its automobile manufacturing business to Mosler and changed its name to Consulier Engineering, Inc. Doing business as Consulier Industries, Mosler became the manufacturer of the Consulier GTP. At that time, Consulier's petition for temporary exemption from the passive restraint requirements was pending before NHTSA; two days later, it was granted, and notice of the grant appeared in the **Federal Register** on april 6, 1990 (55 FR 12982). That exemption expired October 1, 1990.

Consulier was organized in June 1985, and was in the research and development stage of the GTP until June 30, 1989. Between April 1 and October 1, 1990, it produced only 15 vehicles. Before September 1, 1989, it had manufactured four production cars, and one has been completed since that date. Mosler believes that the GTP meets all applicable Federal motor vehicle safety standards, except for the automatic restraint requirements of Standard No. 208. It asked for a year's exemption from the standard.

Mosler/Consulier submitted that it had made a good faith effort to comply with the passive restraint requirements. It has been engaged since 1988 in researching and prototyping such a system, but determined that to develop and engineer its own system was beyond its financial and technical capabilities. A change in the existing front seat belt system would have required a complete redesign of the door frame configuration. As an all-composite body/chassis is used in the GTP, an extensive modification of existing molds would have been required. Accordingly, Consulier negotiated with Chrysler Corporation to purchase air bag assemblies for adaptation and use in the GTP. The necessary components were not delivered within the time frame that Consulier expected, and when it obtained its exemption, it anticipated that the parts would be shipped from Chrysler in the near future and that its vehicles would be in full compliance by October 1, 1990. Such, however, was not the case. Mosler complained of continuing difficulties in obtaining necessary parts from Chrysler, and has obtained only three air bag systems of those contracted for (which were delivered in February 1990). For the six month period ending June 30, 1990, Mosler had a net loss of slightly more than $432,000.

Mosler argued that an exemption would be in the public interest, and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act. It is a pioneer in the construction of composite foam-cored monocoque automobile bodies, which can be recycled, and, because of its light weight, enhances fuel economy. Its technology is also part of the "Green Car" concept being developed in Florida, using a hydrogen fuel cell in the Consulier body. During the exemption period, the vehicles produced will be equipped with a manual restraint system that complies with the previous requirements of Standard No. 208.

No comments were received on the petition.

Given its losses since acquiring Consulier, $432,000 in the six months period ending June 30, 1990, Mosler has made a convincing argument that to require immediate compliance with the passive restraint requirements of Standard No. 208 would cause it substantial economic hardship within the meaning of the statute. It has continued the efforts of its predecessor, Consulier, to obtain delivery of the passive restraint system contracted for with the Chrysler Corporation. However, Chrysler apparently is still unable to deliver components necessary for compliance within the time frame expected. It is evident from Mosler's argument that it has made a good faith effort to comply with the standard, and that only a situation apparently beyond its control has prevented it from doing so. The company is participating in programs intended to enhance fuel economy, recycling of materials, and the environment. The exemption would allow a small manufacturer to continue in existence, and afford continuing employment ot its personnel.

In consideration of the foregoing, it is hereby found that compliance with the passive restraint requirements would create substantial economic hardship for the petitioner, and that the petitioner has made a good faith effort to comply with the standard. It is further found that a temporary exemption is consistent with the public interest and the objectives of the National Traffic and Motor Vehicle Safety Act.

Accordingly, petitioner is hereby granted NHTSA Temporary Exemption No. 91–1 from § S4.1.4 of 49 CFR 571.208 Motor Vehicle Safety Standard No. 208 Occupant Restraint Systems, expiring June 1, 1992.

(15 U.S.C. 1410; delegation of authority at 49 CFR 1.50)

Issued on July 8, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91–16580 Filed 7–11–91; 8:45 am]

BILLING CODE 4910–59–M

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Emergency Evacuation Subcommittee; Performance Standards Working Group

AGENCY: Federal Aviation Adminimistration (FAA), DOT.

ACTION: Notice of establishment of Performance Standards Working Group.

SUMMARY: Notice is given of the establishment of a Performance Standards Working Group by the Emergency Evacuation Subcommittee of the Aviation Rulemaking Advisory Committee. This notice informs the public of the activities of the Emergency

Evacuation Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. William J. (Joe) Sullivan, Executive Director, Emergency Evacuation Subcommittee, Aircraft Certification Service (AIR–3), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267–9554; FAX: (202) 267–9562.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The Emergency Evacuation Subcommittee was established at that meeting to provide advice and recommendations to the Directors, FAA Aircraft Certification and Flight Standards Services, on regulatory standards for the purpose of enhancing the ability of passengers to quickly and safely evacuate an aircraft in an emergency. At its first meeting on May 24, 1991 (56 FR 20492, May 3, 1991), the subcommittee established the Performance Standards Working Group.

Specifically, the working group's task is the following:

Task: The Performance Standards Working Group is charged with making a recommendation to the Emergency Evacuation Subcommittee concerning whether new or revised standards for emergency evacuation can and should be stated in terms of safety performance rather than as specific design requirements. Specifically, the working group should address the following issues as a minimum:

A. Can standards stated in terms of safety performance replace, supplement, or be an alternative to any or all of the current combination of design and performance standards that now address emergency evacuation found in Federal Aviation Regulations parts 25 and 121?

B. If a performance standard is recommended, how can the FAA evaluate a minor change to an approved configuration, or a new configuration that differs in either a minor or a major way from an approved configuration?

Reports: The working group will develop any combination of the following as it deems appropriate:

1. A draft notice of proposed rulemaking proposing new standards stated in terms of safety performance with supporting economic and other required analysis, together with any other collateral documents the working group determines appropriate; or

2. For existing rules where performance standards are not recommended, a report stating the rationale for those recommendations.

3. Recommended organizational structure(s) and time line(s) for completion of this effort, including rationale.

The Performance Standards Working Group will be comprised of experts from those organizations having an interest in the task assigned to it. A working group member need not necessarily be a representative of one of the organizations of the parent Emergency Evacuation Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the working group should write the person listed under the caption "**FOR FURTHER INFORMATION CONTACT**" expressing that desire and describing his or her interest in the task and the expertise he or she would bring to the working group. The request will be reviewed with the subcommittee chair and working group leader, and the individual advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the formation and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the full committee and any subcommittee will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Performance Standards Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on July 8, 1991.

William J. Sullivan,

Executive Director, Emergency Evacuation Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 91–16673 Filed 7–13–91; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee; Emergency Evacuation Subcommittee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of Emergency Evacuation Subcommittee.

SUMMARY: Notice is given of the establishment of an Emergency Evacuation Subcommittee under the FAA Aviation Rulemaking Advisory Committee. This notice informs the public of the activities of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. William J. (Joe) Sullivan, Executive Director, Emergency Evacuation Subcommittee, Aircraft Certification Service (AIR–3), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267–9554; FAX: (202) 267–9562.

SUPPLEMENTARY INFORMATION: On January 14, 1991, the Federal Aviation Administration (FAA) announced the establishment of the Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991). The committee charter became effective on February 5, 1991, when notices of establishment were sent to the appropriate Congressional Committees. The advisory committee provides advice and recommendations to the FAA concerning the full range of the FAA's rulemaking activity with respect to safety-related issues, including aircraft certification. The committee held its first meeting at Baltimore, MD, on May 23, 1991 (56 FR 20492, May 3, 1991). At that meeting, the committee formed several subcommittees and charged them with developing advisory recommendations in different safety-related areas. The subcommittee Chairs and Executive Directors were named, and the member organizations identified. Finally, several specific tasks were assigned to the various subcommittees. At this first meeting, the committee also adopted procedures concerning the operation of the committee, its subcommittees, and their working groups.

Under the procedures adopted by the full committee, each subcommittee meeting is open to the public, except as authorized in section 10(d) of the Federal Advisory Committee Act. Also, notice is given beforehand of the subcommittee meeting agenda. A subcommittee may form working groups made up of experts from those having an interest in an issue to do tasks assigned to the subcommittee. Working group meetings need not be open to the public. This is because working groups must bring their work product back to the subcommittee for full, open, and substantive discussion, and may not communicate directly with the FAA. The subcommittee may: (1) Accept a working group work product and send it directly to the FAA; (2) Modify the work product and send it directly to the FAA; or (3) Return the work product to the working group with instructions for further

activity. Thus, while the functions of a subcommittee are solely advisory, they create a framework within which interested parties may negotiate proposed or final rules and present their consensus to the FAA for action. The more complete these products, the more likely they are to be accepted by the FAA without change and formally published as proposed or final rules. The activities of the Aviation Rulemaking Advisory Committee, and its subcommittees, are consistent with the newly enacted Negotiated Rulemaking Act of 1990 (Public Law 101–648).

The Emergency Evacuation Subcommittee will provide advice and recommendations to the Directors, Aircraft Certification and Flight Standards Services, FAA, on regulatory standards for the purpose of enhancing the ability of passengers to quickly and safely evacuate an aircraft in an emergency. The membership of the Emergency Evacuation Subcommittee consists solely of the following members of the Aviation Rulemaking Advisory Committee:

- Aerospace Industries Association of America, Inc.
- Air Line Pilots Association
- Air Transport Association of America
- Airbus Industrie
- Airport Operators Council International
- Airline Passengers Association of North America, Inc.
- American Association of Airport Executives
- Association Europenne Constructeurs de Material Aerospatiale
- Association of Flight Attendants
- Aviation Consumer Action Project
- Boeing Commercial Airplane Company
- Independent Flight Attendants
- International Association of Machinists
- International Foundation for Airline Passengers
- Joint Aviation Authority
- McDonnell Douglas Corporation
- National Fire Protection Association
- Public Citizen
- Regional Airline Association
- Transport Canada

The establishment of the first Emergency Evacuation Subcommittee working group (the Performance Standards Working Group) is announced elsewhere in this issue of the **Federal Register**. The Secretary of Transportation has determined that the formation and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties imposed on the FAA by law.

Issued in Washington, DC, on July 8, 1991.

William J. Sullivan,

Executive Director, Transport Airplane and Engine Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 91–16674 Filed 7–11–91; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Subcommittee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of Transport Airplane and Engine Subcommittee.

SUMMARY: Notice is given of the establishment of a Transport Airplane and Engine Subcommittee under the FAA Aviation Rulemaking Advisory Committee. This notice informs the public of the activities of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. William J. (Joe) Sullivan, Executive Director, Transport Airplane and Engine Subcommittee, Aircraft Certification Service (AIR–3), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267–9554; FAX: (202) 267–9562.

SUPPLEMENTARY INFORMATION: On January 14, 1991, the Federal Aviation Administration (FAA) announced the establishment of the Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991). The committee charter became effective on February 5, 1991, when notices of establishment were sent to the appropriate Congressional Committees. The advisory committee provides advice and recommendations to the FAA concerning the full range of the FAA's rulemaking activity with respect to safety-related issues, including aircraft certification. The committee held its first meeting in Baltimore, MD, on May 23, 1991 (56 FR 20492, May 3, 1991). At that meeting, the committee formed several subcommittees and charged them with developing advisory recommendations in different safety-related areas. The subcommittee Chairs and Executive Directors were named, and the member organizations identified. Finally, several specific tasks were assigned to the various subcommittees. At this first meeting, the committee also adopted procedures concerning the operation of the committee, its subcommittees, and their working groups.

Under the procedures adopted by the full committee, each subcommittee meeting is open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act. Also, notice is given beforehand of the subcommittee meeting agenda. A subcommittee may form working groups, made up of experts from those having an interest in an issue, to do tasks assigned to the subcommittee. Working group meetings need not be open to the public. This is because working groups must bring their work product back to the subcommittee for full, open, and substantive discussion. Working groups may not communicate directly with the FAA. The subcommittee may: (1) Accept a working group work product and send it directly to the FAA; (2) Modify the work product and send it directly to the FAA; or (3) Return the work product to the working group with instructions for further activity. Thus, while the functions of a subcommittee are solely advisory, they create a framework within which interested parties may negotiate proposed or final rules and present their consensus to the FAA for action. The more complete these products, the more likely they are to be accepted by the FAA without change and formally published as proposed or final rules. The activities of the Aviation Rulemaking Advisory Committee, and its subcommittees, are consistent with the newly enacted Negotiated Rulemaking Act of 1990 (Pub. L. 101–648).

The Transport Airplane and Engine Subcommittee will provide advice and recommendations to the Director, Aircraft Certification Service, FAA, regarding the airworthiness standards for transport category airplanes and engines in parts 25, 33, and 35 of the Federal Aviation Regulations (14 CFR parts 25, 33, and 35), and parallel provisions in Parts 121 and 135 of the Federal Aviation Regulations (14 CFR parts 121 and 135). The membership of the Transport Airplane and Engine Subcommittee consists solely of the following members of the Aviation Rulemaking Advisory Committee:

- Aerospace Industries Association of America, Inc.
- Air Freight Association
- Air Line Pilots Association
- Air Transport Association of America
- Airbus Industrie
- Allied Pilots Association
- Airline Passengers Association of North America, Inc.
- Association Europenne Constructeurs de Material Aerospatiale
- Association of European Airlines
- Association of Flight Attendants
- Boeing Commercial Airplane Company
- Flight Safety Foundation
- General Aviation Manufacturers Association
- International Air Transport Associat.n

- International Association of Machinists
- International Foundation for Airline Passengers
- Joint Aviation Authority
- McDonnell Douglas Corporation
- National Air Transportation Association, Inc.
- National Business Aircraft Association
- Regional Airline Association
- Transport Canada

The Secretary of Transportation has determined that the information and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties imposed on the FAA by law.

Issued in Washington, DC, on July 8, 1991.

William J. Sullivan,

Executive Director, Transport Airplane and Engine Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 91-16608 Filed 7-11-91; 8:45 am]

BILLING CODE 4910-13-M

Sunshine Act Meetings

Federal Register
Vol. 56 No. 134
Friday, July 12, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 4–91

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date, Time, and Subject Matter

Thurs., July 25, 1991 at 10:00 a.m.—Consideration of Proposed Decisions on claims against Iran.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 601 D Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 601 D Street, NW., Room 10000, Washington, DC 20579. Telephone: (202) 208–7727.

Dated at Washington, DC on July 10, 1991.

Judith H. Lock,

Administrative Officer.

[FR Doc. 91–16773 Filed 7–10–91; 1:43 pm]

BILLING CODE 4410–01–M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

DATE AND TIME: July 14, 1991, 11:00 a.m. to 2:00 p.m.

PLACE: Ramada Renaissance Hotel-Techworld, 999 Ninth Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE DISCUSSED:

Conference recap
Preliminary discussion of Conference recommendations
Preliminary planning for NCLIS followup to Conference

Special provisions will be made for handicapped individuals by calling Barbara Whiteleather, (202) 254–3100, no later than one week in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Barbara Whiteleather, NCLIS, Suite 310, 1111 18th Street, N.W., Washington, D.C. 20036, (202) 254–3100.

Dated: June 13, 1991.

Peter Young,

NCLIS Executive Director.

[FR Doc. 91–16714 Filed 7–10–91; 9:37 am]

BILLING CODE 7527–01–M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:23 p.m. on Tuesday, July 9, 1991, the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to (1) the resolution of failed thrift institutions, and (2) establishing a consolidated field office in Somerset, New Jersey.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, Vice Chairman Andrew C. Hove, Jr., and Director T. Timothy Ryan Jr. (Director of Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550—17th Street, NW., Washington, DC.

Dated: July 10, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91–16799 Filed 7–10–91; 2:32 pm]

BILLING CODE 6714–01–M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:23 p.m. on Tuesday, July 9, 1991, the Board of Directors of the Resolution Trust Corporatin met in open session.

In calling the meeting, the Board unanimously agreed that Corporation business required the withdrawal of the following matter from the Discussion Agenda:

Memorandum re:

Proposal to provide a limited loss guarantee to private lenders financing the sale and site improvement of RTC-owned unimproved residential land.

The Board further agreed that no earlier notice of this change in the subject matter of the meeting was practicable.

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: July 10, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91–16800 Filed 7–11–91; 2:32 pm]

BILLING CODE 6714–01–M

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1440]

TIME AND DATE: 3 p.m. (EDT), July 16, 1991.

PLACE: Bristol Tennessee Electric System Auditorium, 2470 Volunteer Parkway, Bristol, Tennessee.

STATUS: Open.

AGENDA: Approval of minutes of meeting held on May 8, 1991.

DISCUSSION ITEM:

1. Preliminary Rate Review.

ACTION ITEMS:

Old Business

1. Supplement to Personal Services Contract with Performance Controls Company.

New Business

C—Power

C1. Supplement to Interconnection Agreement with Kentucky Utilities.

E—Real Property Transactions

E1. Sale of Permanent Industrial Easement Affecting 6.37 Acres of TVA Land in Jackson (Madison County), Tennessee.

E2. Sale of Permanent Easement Affecting Approximately 0.14 Acre of the Philadelphia, Mississippi, Power Service Center Property in Neshoba County, Mississippi.

E3. Nineteen-Year Lease Agreement Affecting 2.65 Acres of Boone Reservoir Land in Washington County, Tennessee.

E4. Sale of Noncommercial, Nonexclusive Permanent Easements Affecting 0.52 Acre of Tellico Reservoir Shoreland in Loudon and Monroe Counties, Tennessee.

E5. Abandonment of Flowage Easement Rights Affecting Approximately 0.01 Acre of Douglas Reservoir Land in Jefferson County, Tennessee.

F—Unclassified

F1. Filing of Condemnation Cases.

F2. Supplement to Personal Services Contract with Fish and Wildlife Associates, Inc.

F3. Amendment to Fuel Contract with Westinghouse Electric Corporation for Watts Bar Nuclear Plant.

F4. Loan of Uranium to Commonwealth Edison Company.

F5. Personnel Services Contract with Bartlett Nuclear, Inc.; NUMANCO, Inc.; and ABB Power Systems Energy Services, Inc.

Information Items

1. New Investment Management Agreement—TVA Retirement System.
2. Negotiated Purchase Contract with Stone & Webster Engineering Corporation for Replacement of Powerhouse Components for Widows Creek Power Plant Unit 8 (GA-77984A).
3. Personal Services Contract with Stone & Webster Engineering Corporation.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Manager, Media Relations, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–6000, Knoxville, Tennessee. Information is also available to TVA's Washington Office (202) 479–4412.

Dated: July 9, 1991.

Maureen H. Dunn,

Assistant General Counsel.

[FR Doc. 91–16718 Filed 7–10–91; 9:45 am]

BILLING CODE 8120–08–M

UNITED STATES INSTITUTE OF PEACE

DATE: July 18, 1991.

TIME: 9:00 a.m. to 5:30 p.m.

LOCATION: 1550 M Street, NW., (Ground Floor Conference Room), Washington, D.C.

STATUS: (Open Session)—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in Subsection 1706(h)(3) of the United States Institute of Peace Act, Pub Law. (98–525).

AGENDA: (Tentative)—Consideration of the minutes of the Forty-Seventh meeting of the Board of Directors; Chairman's Report; President's Report; Annual Program Review; Board Committee Reports.

CONTACT: Mr. Gregory McCarthy, Director, Public Affairs and Information, Telephone: 202/457–1700.

Dated: July 10,1991.

Ms. Bernice J. Carney,

Director, Office of Administration, United States Institute of Peace.

[FR Doc. 91–16772 Filed 7–10–91; 1:42 pm]

BILLING CODE 3155–01–M

Corrections

Federal Register
Vol. 56, No. 134
Friday, July 12, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Controlled Substances; Proposed Revised 1991 Aggregate Production Quotas

Correction

In notice document 91-14137 beginning on page 27540, in the issue of Friday, June 14, 1991, make the following corrections:

1. In the table appearing on page 27540, in the second and third columns, the entries for "Methadone Intermediate" should read "2,344,000" and "3,205,000" respectively; the entries for "Opium" should read "1,184,000" and "1,233,000" respectively.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Notice of Meetings

Correction

In notice document 91-11797 published in the issue of Friday, May 17, 1991, and corrected in the issue of Friday, June 14, 1991, appearing on page 27558, in the third column, in the first paragraph, in the third line "May 10, 1991," should read "May 17, 1991,".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-020-01-4212-12; AZA 25309]

Realty Action; Exchange of Public Lands, Pima County, AZ

Correction

In notice document 91-14504 appearing on page 28167 in the issue of Wednesday, June 19, 1991, in the first column, in the land description, the fifth line from the bottom should read "T. 18 S., R. 12 E.,".

BILLING CODE 1505-01-D

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List Addition

Correction

In notice document 91-15455 appearing on page 29637 in the issue of Friday, June 28, 1991, in the second column, under **SUPPLEMENTARY INFORMATION**, in the second paragraph, in the third line insert "not" after "did".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ES91-39-000, et al.]

The Detroit Edison Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Correction

In notice document 91-15394 beginning on page 29641 in the issue of Friday, June 28, 1991, make the following correction:

1. On page 29642, in the second column, the docket number for **7. Pennsylvania Power & Light Company** should read "[Docket No. ER91-466-000]"

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 26588]

Environmental Impact Statement; Effects of Changes of Aircraft Flight Patterns Over State of New Jersey

Correction

In notice document 91-15253 beginning on page 29521, in the issue of Thursday, June 27, 1991, make the following correction:

1. On page 29522, in the first column, in the last paragraph, in the third line following "by" insert "July 29, 1991:".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90F-0311]

Nissin Chemical Industry Co., Ltd.; Withdrawal of Food Additive Petition

Correction

In notice document 91-15296 beginning on page 29493, in the issue of Thursday, June 29, 1991 make the following correction:

1. On page 29494, in the first column, in the first line, "prejudice" is misspelled.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-38509; FRL-3846-4]

Existing Stocks of Pesticide Products; Statement of Policy

Correction

In notice document 91-14958 beginning on page 29362, in the issue of Wednesday, June 26, 1991, make the following correction:

1. On page 29369, in the third column, in the first full paragraph, in the fourth line "December 26, 1991" should read "August 26, 1991".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP91-2291-000, et al.]

Southern Natural Gas Company, et al.; Natural Gas Certificate Filings

Correction

In notice document 91-15543 beginning on page 29954 in the issue of Monday, July 1, 1991, make the following correction:

On page 29955, in the first column, under item 4, "Docket No. CP-2278-000" should read "Docket No. CP91-2278-000".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 910657-1157]

RIN 0648-AD58

Snapper-Grouper Fishery of the South Atlantic

Correction

In proposed rule document 91-15577 beginning on page 29922 in the issue of Monday, July 1, 1991 make the following corrections:

1. On page 29922, in the third column, under DATES, in the last line "August 15, 1991" should read "August 12, 1991".

2. On page 29923, in the first column, under **Background**, in the first column, in the penultimate line "23" should read "13".

BILLING CODE 1505-01-D

federal register

Friday
July 12, 1991

Part II

Department of the Interior

Bureau of Land Management

43 CFR Parts 3400 et al.
Federal Coal Management Program Regulations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3400, 3410, 3420, 3440, 3450, 3460, 3470, 3480

[WO-660-4120-02-24 1A]

RIN 1004-AB44

Coal Management—General; Exploration Licenses; Competitive Leasing; Licenses to Mine; Environment; Coal Management Provisions and Limitations; Management of Leases, Licenses, and Logical Mining Units; and Coal Exploration and Mining Operations

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise provisions of the operations-related portions of the existing Federal Coal Management Program regulations, specifically those regulations relating to exploration licenses, logical mining units, suspensions, lease management, diligence, and exploration and mining operations on leased Federal coal. Most of the changes are administrative and procedural in nature and provide more explicit and coherent direction for situations and conditions not anticipated by the existing regulations. Public comment is solicited on all proposed revisions to the regulations, including a change in Federal coal diligence provisions proposed to reflect market conditions, as well as recent legislative initiatives by certain Members of Congress. Existing subparts and sections of the regulations are proposed for redesignation to reflect more accurately the sequence of actions in the Federal Coal Management Program.

DATES: Comments should be submitted by September 10, 1991. Comments received or postmarked after the above date may not be considered in the decisionmaking process on the final rule.

ADDRESSES: Comments should be sent to:

Director (140), Bureau of Land Management, room 5555, Main Interior Building, 1849 C Street, NW., Washington, DC 20240.

Comments will be available for public review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Paul Politzer, (202) 208–7722
or
Harold W. Moritz, (202) 208–7722

SUPPLEMENTARY INFORMATION: On July 30, 1982, the Department of the Interior published regulations at 43 CFR Group 3400 (41 FR 33114), "Amendments to the Coal Management Regulations" and regulations at 30 CFR Part 211 (41 FR 33154), "Coal Exploration and Mining Operations". Since that time, the onshore minerals functions of the Department have gone through three major reorganizations, resulting in the addition of the provisions in 30 CFR part 211 to 43 CFR group 3400, at part 3480. This proposed rule would reorganize the lease management regulations to reflect more accurately the sequence of events. Specific sections proposed for revision are set out below.

In addition to the textual changes noted below, some of the subparts and sections of 43 CFR group 3400 would be resequenced. In general, the resequencing was done as follows:

Existing Regulation Citations	*Proposed Regulation Citations*
§ 3480.0–1	§ 3400.0–1
§§ 3400.0–3/3480.0–3	§ 3400.0–3
§ 3480.0–4	§ 3400.0–4
§§ 3400.0–5/3480.0–5	§ 3400.0–5
§ 3480.0–6	§ 3400.0–6
§ 3400.4(a)	§ 3400.4(a)
N/A	§ 3400.7 (new)
N/A	§ 3400.8 (new)
Subpart 3410	Subpart 3410
N/A	Subpart 3411 (new)
§ 3420.1–2(b)	§ 3420.1–2(b)
§ 3422.1(a)	§ 3422.1(a)
§ 3425.4(a)(2)	§ 3425.4(a)(2)
§ 3440.1–4(a)	§ 3440.1–4(a)
§ 3440.1–4(b)	§ 3440.1–4(b)
Part 3460	Part 3450
Part 3470	Part 3460
Subparts 3471 and 3475.	Subpart 3461
Subpart 3472	Subpart 3462
Subpart 3473.1 through .2–2.	Subpart 3471
Subpart 3473.3 through .3–2.	Subpart 3472
Subpart 3474	Subpart 3473
Subpart 3453	Subpart 3474
Subpart 3452 and § 3471.3.	Subpart 3475
Subpart 3451	Subpart 3476
§ 3475.6(c) and §§ 3487.1(a)–(g).	Subpart 3477
§§ 3473.4 and 3483.3	Subpart 3478
Subpart 3481	Subpart 3481
Subparts 3482 and 3484.	Subpart 3482
Subparts 3482 and 3484.	Subpart 3483
Subpart 3483	Subpart 3484
§ 3487.1(h)	Subpart 3485
Subparts 3485 and 3486 and § 3465.2.	Subpart 3486

It should be noted, however, within complete subparts in the proposed regulations, some specific paragraphs of existing regulations would be moved to subparts other than the ones designated above. For example, existing § 3471.3 "Cancellation or forfeiture" would be consolidated in proposed § 3475.3 "Cancellation", instead of being moved with the rest of existing subpart 3471 to subpart 3461.

Included in this resequencing would be a division of functions between processing authorization actions (e.g., logical mining unit application processing) and monitoring onsite operations (e.g., logical mining unit diligence requirements). It would then consolidate the revised operations-related portions of the regulations into the reorganized regulations.

Minor word changes are made in the existing regulations to ensure consistency throughout the entire group 3400, especially reflecting resequencing and revisions to existing definitions and additions of new definitions. The existing regulations at 43 CFR subparts 3420, 3430, 3440, 3460, and 3472, and §§ 3400.1 through 3400.6 would not be amended in this proposed rule, except as specifically addressed herein. This preamble highlights the specific changes proposed in this rule, set out by section number as appropriate.

When published as final, this proposed rulemaking, amended as appropriate based on public comments received, will apply automatically to all Federal coal leases to the extent that the final regulations are not inconsistent with the express terms and conditions of the leases.

PART 3400 —COAL MANAGEMENT—GENERAL

Subpart 3400 Introduction—General

Section 3400.0–1 Purpose

This paragraph is an amendment of existing § 3480.0–1, which would be revised to address the purpose of the entire group 3400 instead of only the operations portion of the regulations.

Section 3400.0–3 Authority

The authority section of existing part 3480 would be consolidated into this section to include the additional authorizing statutes of 43 CFR group 3400.

Section 3400.0–4 Scope

This paragraph is an amendment of existing § 3480.0–4, which would be revised to address the scope of the entire group 3400 instead of only the operations portion of the regulations. The provision regarding bonding under the Surface Mining Control and

Reclamation Act of 1977 (SMCRA) interim lands program would be removed because the program no longer exists.

Section 3400.0–5 Definitions

The definitions sections of the various parts of group 3400 would be combined and amended. Definitions that duplicate identical definitions for implementation of SMCRA would be revised to cross-reference the definitions listed within title 30, subchapters A through I of the Code of Federal Regulations. Regulatory language that is not properly part of the definitions would be moved to the appropriate portions of group 3400 (e.g., the examples in the existing definition of "LMU criteria" would be moved to proposed subpart 3477 or proposed subpart 3485).

"Beneficial use" would be added to the definitions for clarification regarding the effects of the various suspensions that may be approved for Federal coal leases pursuant to 43 CFR subpart 3478.

"Bypass coal" has been revised to remove the phrase "economically and in an environmentally sound manner." For unleased Federal coal that would otherwise be bypassed, the lease applicant would be required to meet the standards for either an emergency lease or a lease modification. All Federal coal that is mined must be mined in an environmentally sound manner pursuant to all laws, including the National Environmental Policy Act and SMCRA.

"Commercial quantities" has been changed from 1.0 percent of the recoverable coal reserves to 0.3 percent of the recoverable coal reserves. This change is addressed in detail with the discussion of "MLA diligence" later in this preamble.

"Continued operation" has been changed to remove the 3-year basis for satisfying this requirement. This change is discussed further in the diligence section of this preamble.

"General Mining Order" would be revised to state that a formal General Mining Order applies to all operators/lessees nationwide and is published in the **Federal Register** for review and comment. The regulations at 43 CFR subpart 3486 would be clarified to set out the difference between a formal General Mining Order and orders issued by the authorized officer.

"Holds and has held" would be clarified by the addition of "including nonconsecutive periods" after "the cumulative amount of time" in the definition. The total amount of time computed to determine whether an entity has held a coal lease for 10 years includes all periods during which that entity holds a "working interest", even if such periods are nonconsecutive. This changes neither the intent nor the administration of the existing regulations; however, the lack of the phrase "including nonconsecutive periods" has caused some confusion in the four and one-half years since the definition of "holds and has held" was published (51 FR 43910, 43922, December 5, 1986). This revision is consistent with current and past policy of the Department of the Interior.

"Indebtedness" would be added to the definitions to clarify that only financial obligations are required to be covered in the bond.

"Interest" would be revised to state that a "security agreement" is an "interest" only if transfer of title to the lease is a remedy for default.

"Maximum economic recovery" would be revised by moving the procedural considerations from the definition. Maximum economic recovery will still be determined pursuant to review of the information submitted to comply with 43 CFR 3483.3(g). The authorized officer, based on the information provided by the operator/lessee in the mining plan, would continue to make the determination that maximum economic recovery will be achieved based on standard industry operating practices including, but not limited to: existing, proven technology; commercially available and economically feasible equipment; coal quality, quantity, and marketability; safety, exploration, operating, processing, and transportation costs, and compliance with the established requirements. These requirements are procedural, not regulatory, and have been removed from the definition of "maximum economic recovery." The authorized officer would still ensure conservation of the recoverable coal reserves and other resources and prevention of the wasting of coal.

"MLA diligence" would be added to the regulations to eliminate superfluous language throughout the regulations and to set forth the four ways by which a Federal coal lease becomes subject to the diligence provisions of the Federal Coal Leasing Amendments Act of 1976 (FCLAA). "MLA diligence" includes the conditions of diligent development, continued operation, advance royalty, and the 3-year resource recovery and protection plan submittal.

Section 3400.0–6 Responsibilities

This section is a revision of redesignated existing § 3480.0–6, addressing the responsibilities of various Bureaus and Agencies that are involved in the Federal Coal Management Program. The identification of officials responsible for implementing the regulations, "the Director; the Deputy Director for Energy and Mineral Resources; the Chief, Division of Solid Mineral Operations; the State Director; and the authorized officer", that appears in § 3480.0–6(c) would be removed. Those officials, some of whose titles have changed, and, in addition, the Chief, Division of Solid Mineral Leasing, continue to be responsible for implementation of the solid mineral operations and solid mineral leasing programs of the Bureau of Land Management. It has been determined that it is no longer necessary to address the internal delegation of authority among those officials responsible for implementing the regulations. Specific paragraphs would be added that address the responsibilities of the Minerals Management Service, and the roles of the Bureau of Land Management, the U.S. Forest Service, other surface management agencies, and the Bureau of Indian Affairs, as well as Bureau of Land Management responsibilities on lands under the jurisdiction of other Federal Agencies.

Section 3400.4 Federal/State Government Cooperation

Paragraph (a) of this section would be revised to reflect one of the decisions made as a result of the 1986 Secretarial Issue Document on the Federal Coal Management Program. The Secretary adopted the Bureau of Land Management's preliminary decision to appoint the State Director, for the State primarily involved, as chairman of each regional coal team. The proposed revision of § 3400.4(a) is necessary to implement the Secretary's decision to allow the State Director to appoint a representative when he is absent to serve as chairperson of the regional coal team. The proposed revisions to this paragraph would also make the last sentence in the existing § 3400.4(a) redundant, and that sentence has been removed in this proposed regulation.

Section 3400.7 Public Availability of Information

This section would revise and redesignate existing regulations concerning treatment given to confidential coal information submitted to the Bureau of Land Management by parties outside the Federal Government. Comments are requested on the proposed regulatory approach and on the specific language used.

The Bureau of Land Management's review of the existing coal confidentiality regulations has identified

a need for new regulatory language that will ensure consistency in the treatment of different types of coal data submitted to the Bureau of Land Management. The existing coal management regulations contain various unrelated confidentiality provisions that, in some cases, lack consistency with one another. The proposed § 3400.7 would consolidate these various provisions in a single location in the group 3400 regulations and provide a concise explanation for how confidential coal data will be treated. Existing 43 CFR 3422.3–4(g), concerning information submitted for review by the Attorney General, is appropriate as written, and remains unchanged by this proposed rulemaking.

Proposed § 3400.7 would reference the Department confidentiality regulations at 43 CFR 2.22, and would clarify that those regulations govern the Bureau of Land Management's treatment of coal data and information relating to fair market value and coal exploration licenses pursuant to 30 U.S.C. 201(a)(1) and 201(b), unless specifically changed by the proposed group 3400 regulations.

Proposed § 3400.7 would further set out the special requirements imposed under the group 3400 regulations for marking coal data and information to ensure its treatment as confidential under group 3400 and under 43 CFR part 2. Proposed § 3400.7(b) requires that coal data and information submitted to the Bureau of Land Management be marked confidential at the time of its submission, or a reasonable time thereafter. If the data and information are so marked, the Bureau of Land Management will exercise its discretionary authority under the Freedom of Information Act (5 U.S.C. 552 *et seq.* (FOIA)) to keep the marked data and information confidential to the extent allowed by the regulations in 43 CFR part 2.

Failure to mark coal data and information in the manner required in proposed § 3400.7(b) may result in the release of such data or information to the extent allowed by law, and such release may also occur without prior notice to the submitter. The Department regulations at 43 CFR 2.15(d) govern the extent to which the Bureau of Land Management must give notice to submitters of trade secrets or commercial or financial information (i.e., data and information which would normally fall within the parameters of exemption 4 of FOIA (5 U.S.C. 552(b)(4)), prior to releasing that data and information in response to a FOIA request.

43 CFR 2.15(d)(1) states:

> If a [FOIA] request seeks a record containing trade secrets or commercial or financial information submitted by a person outside of the Federal government, the bureau processing the request shall provide the submitter with notice of the request whenever—
>
> (i) The submitter has made a good faith designation of the information as commercially or financially sensitive, or
>
> (ii) The bureau has reason to believe that disclosure of the information may result in commercial or financial injury to the submitter.

However, 43 CFR 2.15(d)(4)(v) states that notification to a submitter is not required if:

> The information was not designated by the submitter as confidential when it was submitted, or a reasonable time thereafter, if the submitter was specifically afforded an opportunity to make such a designation; however, a submitter will be notified of a request for information that was not designated as confidential at the time of such submission, or a reasonable time thereafter, if there is substantial reason to believe that disclosure of the information would result in competitive harm.

Under 43 CFR 2.15(d)(4)(v), if a submitter is given the opportunity to mark data and information as confidential (such as under proposed § 3400.7) and fails to do so, the Bureau of Land Management must notify a submitter prior to the release of the information only if the Bureau of Land Management has substantial reason to believe, either because of the nature of the data and information or because of surrounding circumstances, that disclosure would result in competitive harm. 43 CFR 2.15(d)(4) also provides that notice to a submitter is not required in certain other circumstances.

It should be noted that the notice requirements of 43 CFR 2.15 pertain only to trade secrets and commercial or financial information (i.e., materials covered by exemption 4 of FOIA). The requirements for marking data and information in proposed § 3400.7, however, apply to all coal data and information submitted under the proposed group 3400 regulations. Therefore, submitters who wish other data and information to be kept confidential to the extent allowed by other FOIA exemptions should also mark it in accordance with the requirements of proposed § 3400.7. The Bureau of Land Management may withhold data and information covered by other FOIA exemptions without § 2.15(d) consultation.

Proposed § 3400.7(c) clarifies that data and information protected under 43 CFR 2.22 (i.e., certain coal data and information required by 30 U.S.C. 201) to be held confidential, and thus protected from disclosure by exemption 3 of FOIA (5 U.S.C. 552(b)(3)), will be treated as confidential to the extent required by law, regardless of any designation of confidentiality by a submitter under proposed § 3400.7(b).

Proposed § 3400.7(d) notes, however, that the protection provided by 43 CFR 2.22 is limited, and that submitters who wish data and information to be kept confidential beyond the protection of 43 CFR 2.22 must mark it in accordance with proposed § 3400.7(b) in order to obtain the protection provided by that proposed section.

Section 3400.7 would also clarify the standards for treatment of data and information submitted pursuant to the Indian Mineral Development Act of 1982.

The proposed changes include revising the confidentiality regulations found at existing paragraphs 43 CFR 3410.4(b), 3420.1–2(b), 3422.1(a), 3453.2–2(g), and 3481.3. The language in these paragraphs would be deleted and replaced with language which cross-references proposed § 3400.7. In addition to the previously discussed changes, some existing paragraphs would also be redesignated for consistency with the resequencing of group 3400. Under the new sequencing: § 3410.4(b) would become § 3482.4(c); § 3420.1–2(b) would remain as numbered; § 3422.1(a) would remain as numbered; § 3453.2–2(g) would become § 3474.2–1(a) (2)(iii), (3) and (4); and § 3481.3 would become § 3481.2.

Public comments are requested on the Bureau of Land Management's treatment of the various categories of commercial or financial coal data and information. Specific comments are especially sought regarding why any data or information should be treated any differently than discussed in this preamble.

Section 3400.8 Surface Management and Protection

This section is currently § 3465.1. The remainder of subpart 3465 would be merged in proposed subpart 3486, as discussed below.

Sections 3400.9–1 through 3400.9–4

These sections would be adopted from existing group 3000. The sections are those dealing with nondiscrimination, false statements, unlawful interests, and appeals. As the mineral leasing laws have evolved, the scope of group 3000 has devolved into applicability almost solely to fluid minerals. As such, there is a need for adoption of these four provisions into the group 3400 regulations.

PART 3410—EXPLORATION LICENSES

Subpart 3410 Exploration Licenses

All exploration operations provisions would be consolidated in subpart 3482, including existing § 3410.4. All bond provisions would be consolidated in subpart 3473, including existing § 3410.3–4.

Section 3410.1–2(c)

The Bureau of Land Management has become aware that some coal exploration on unleased land is done as part of the drilling of water-monitoring wells. Coal exploration for commercial purposes without an exploration license constitutes trespass against the United States. The Congress clearly intended in section 2(b) of the Mineral Leasing Act (MLA) that the Bureau of Land Management should regulate all exploration operations under exploration licenses and receive the data from such exploration operations in order to administer the Federal Coal Management Program. This paragraph would be amended to set out specifically that all exploration activities taking place on unleased Federal coal, including the drilling of water-monitoring wells, are required to have an approved exploration license and exploration plan. See also the PREAMBLE discussion on new Subpart 3411 below regarding licenses for incidental exploration.

Section 3410.2–1(c)

This section would be amended to provide that the Bureau of Land Management is no longer required to publish in the **Federal Register** a "Notice of Invitation" to participate in the exploration operations under an approved exploration license. By removing this publication requirement, the Federal Government should realize a savings in cost and time in the processing of exploration licenses. The exploration license applicant would still be required to publish the invitation in a newspaper of general circulation in the area where the lands covered by the application are located, and the notice would also be posted in the appropriate Bureau of Land Management Office(s).

Section 3410.2–2(a) (1) and (2). The language addressing environmental-impact mitigation would be moved among 43 CFR 3410.3–2 and 3411.3–2 (limitations on licenses), § 3482.1 (exploration plan content), and § 3482.5 (performance standards for exploration) to provide more coherent administration of exploration activities on Federal lands.

The Bureau of Land Management specifically requests comments on whether automatic participation in exploration licenses should be retained in the final rule.

Sections 3410.3–2(c), 3411.3–2(d), and 3482.2(c)

These sections would be added to provide that the Bureau of Land Management would not issue either an exploration license or a license for incidental exploration to, and would not approve an exploration plan for, an entity that has outstanding violations pursuant to 30 CFR 773.15(b). If the authorized officer's review reveals that there are outstanding violations of surface coal mining operations owned or controlled by the applicant or anyone who owns or controls the applicant, no exploration license or license for incidental exploration will be issued to, and no exploration plan will be approved for, the applicant until such outstanding violations are corrected pursuant to 30 CFR chapter VII. The Office of Surface Mining, Reclamation and Enforcement (OSMRE) is currently drafting a rulemaking to revise 30 CFR part 772. The preamble to that proposed rulemaking discusses the prohibitions/limitations imposed on entities that are included on the Applicant Violator System (AVS), pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA). That proposed rulemaking also discusses the remedies that an applicant listed on the AVS may take pursuant to SMCRA to correct the entity's violations. The PREAMBLE DISCUSSION of the revisions proposed to be made to 30 CFR part 772 by OSMRE is incorporated by reference in this PREAMBLE DISCUSSION in its entirety.

Subpart 3411 Licenses for Incidental Exploration

This new subpart would be added to provide for noncompetitive, off-lease drilling of wells when required by the regulatory authority pursuant to SMCRA. The regulatory authority requires such wells to be drilled for the purpose of gaining information on the effect of coal mining on the aquifers or to assess alluvial valley floor characteristics. Approvals of any such exploration drill holes need to be expedited as much as possible.

A license for incidental exploration will be issued upon application in such situations where the drilling may penetrate Federal coal. Drilling without a license for incidental exploration would constitute trespass. Since the license is noncompetitive, the geologic, geophysical, and geochemical data obtained as a result of such exploration would have to be provided to the authorized officer and would be public information. Release of these data would not be considered as damaging the competitive position of the licensee, as provided in section 2(b)(3) of MLA (30 U.S.C. 201(b)(3)).

For licenses for incidental exploration, there would be no requirement that the applicant provide an opportunity for other parties to participate.

Licenses for incidental exploration would still be subject to the same environmental, surface management agency, existing land-use plan, and compliance-with-established-requirements criteria as those for exploration licenses. Finally, licenses for incidental exploration would be subject to the same limitations as those that apply to exploration licenses, with one exception: A license for incidental exploration may only be issued where drilling may penetrate Federal coal and where requested to be drilled by the regulatory authority. Successive licenses for incidental exploration would be allowed, as necessary.

PART 3420—COMPETITIVE LEASING

Subpart 3422 Lease Sales

Section 3422.3–1 Bidding Systems

The regulations at 43 CFR 3422.3–1 would be revised to replace the cross-reference to 10 CFR part 378 with a cross-reference to 30 CFR part 260. 10 CFR part 378 was redesignated as 30 CFR part 260 on January 11, 1983 (48 FR 1182).

Subpart 3425 Leasing on Application

Section 3425.4 Consultation and Sale Procedures

The regulations at 43 CFR 3425.4(a)(2) would be changed to remove the requirement that the Attorney General be consulted before the Bureau of Land Management holds any coal lease-on-application sales. During Fiscal Year 1988, the Bureau of Land Management conducted a program review of the coal lease-on-application program and determined, among other things, that Bureau of Land Management Field Offices do not routinely consult with the Department of Justice before holding these sales. The Department of Justice was contacted to determine whether it wished to be consulted before coal lease-on-application sales are held. Comments received from the Department of Justice stated that the Department of Justice was satisfied with the level of information that it was receiving. The Department of Justice's primary concern is the potential antitrust implication of issuing Federal

coal leases to specific, prospective coal lessees.

This procedural revision would not alter the level of information submitted to the Department of Justice because prospective Federal coal lessees would continue to send information about their holdings of coal reserves to the Department of Justice prior to lease issuance. It also would not alter the requirement found at § 3420.4–5 that the Attorney General be consulted before the Secretary of the Interior adopts a regional coal lease-sale schedule. It would merely eliminate an unnecessary step in the coal lease-on-application procedures.

PART 3430—NONCOMPETITIVE LEASES

Subpart 3436 Coal Lease and Coal Land Exchanges: Alluvial Valley Floors

Section 3436.0–5 Definitions

This section of the existing regulations has been mislabeled since promulgated as final regulations on July 30, 1982 (47 FR 33114, 33145). Section 3436.0–5 is, in fact, a condensation of what the Secretary is required to consider as part of overall exchanges pursuant to alluvial valley floor determinations. This section would be redesignated § 3436.1–1, entitled "Criteria", and the remainder of § 3436.1–1 would be redesignated sequentially. This should help to eliminate some of the confusion between the term "substantial legal and financial commitments" as used in the context of unsuitability assessments and "substantial financial and legal commitments" as used in the context of alluvial valley floor exchanges.

PART 3440—LICENSES TO MINE

Subpart 3440 Licenses to Mine

Section 3440.1–4 (a) and (b) Area and Duration of License

These two paragraphs would be amended to provide that all licenses to mine have a uniform duration of 5 years. The reason for this proposed change is that, under existing regulations, the licensees were under an obligation to reapply constantly for licenses to mine. Since licenses to mine are subject to the permit provisions of SMCRA, which provides for permit areas to be bonded in 5-year increments, there was no justification for maintaining a less-than-5-year duration for a license to mine.

PART 3450—ENVIRONMENT

Subpart 3451 Federal Lands Review—Unsuitability for Mining

This subpart would be redesignated without amendment from existing subpart 3461.

PART 3460—COAL MANAGEMENT PROVISIONS AND LIMITATIONS

Subpart 3461 Coal Management Provisions and Limitations

This subpart would be amended by incorporating existing §§ 3471.1, 3471.2, and 3471.4 as §§ 3461.1 through 3461.3. The subpart would also include the existing §§ 3475.1 through 3475.3 as § 3461.4. Existing §§ 3475.4 and 3475.5 would be removed as redundant.

Subpart 3462 Lease Qualification Requirements

This subpart would be redesignated from existing subpart 3472.

Section 3462.1–2(e)(4)(i)(A)

This provision would be amended to make it clear that "record-title" relinquishment of the lease has to be pending to avoid disqualification from being issued MLA leases. Relinquishment of reserves solely to satisfy a statutory or regulatory provision is not in the public interest. This amendment would clarify that the section 2(a)(2)(A) lessee-qualification provision cannot be met by an operator/lessee attempting to relinquish remaining recoverable reserves where the existing mining operation is the only operation that could recover the remaining reserves. It should be noted, however, that this clarification does not prevent an operator/lessee from relinquishing "any bed of the coal deposit" pursuant to proposed 43 CFR 3475.2–1(a), provided that the public interest test has been met.

Section 3462.1–2(e)(6)

Existing § 3472.(e)(6) would be redesignated § 3462.1–2(e)(7). A new § 3462.1–2(e)(6) would be added to address the transfer of record title from a subsidiary corporation to the parent corporation where only the subsidiary's leases disqualify the parent corporation. If such a subsidiary is liquidated by the parent, the record title of the subsidiary's Federal coal leases would be allowed to be assigned to the parent corporation as a result of the subsidiary's liquidation. However, if the parent holds Federal coal leases, other than those of the subsidiary, which disqualify it, this clarifies that the parent will be required to divest the subsidiary's leases or be subject to legal action by the Department of Justice.

Section 3462.1–2(e)(7)(ii)(G)

This section would be added to address whether, during a specific continued operation year, an entity is qualified when the lease is not producing and the operator/lessee will be paying advance royalty. The paragraph would require that if the lease is not producing and has not yet paid advance royalty in lieu of continued operation, the entity is disqualified until the advance royalty payment is received by the Minerals Management Service.

Section 3462.1–2(h)

This paragraph would be added to the special leasing qualifications. It would require any applicant for a Federal coal lease or a transfer of a Federal coal lease to submit a certified list of the corporate entities affiliated with the applicant that are currently, or may be, involved in obtaining minerals leased pursuant to MLA. In further clarification of this requirement, a new definition—"potentially disqualifying affiliations"—would be added at § 3400.0–5 for the sole purpose of submittal of the certified list at the time of application for a Federal coal lease or Federal coal lease transfer. This information is necessary for monitoring compliance with the lessee qualification provisions of section 2(a)(2)(A) of MLA.

PART 3470—MANAGEMENT OF LEASES AND LICENSES

Subpart 3471 Payments and Fees

This proposed subpart would retain the filing fee of $10, currently established in 43 CFR 3473.2–1(a)(2), for each application for, or application for renewal of, a license to mine. The proposed revision of § 3440.1–4 would extend the duration of a license to mine to 5 years. An analysis of processing costs, filing fees and cost recovery now being conducted by the Bureau of Land Management in response to a cost-recovery analysis prepared by the Office of the Inspector General may show a need to revise this fee.

No filing fee is proposed for logical mining unit (LMU) applications.

No filing fee is proposed for any type of suspension.

No filing fee is proposed for an exploration plan or a resource recovery and protection plan, because filing fees have already been assessed for those lands included in the land use authorization. Exploration can only be performed pursuant to an exploration license or a lease; submission of resource recovery and protection plans is required by section 7(c) of MLA (30 U.S.C. 207(c) (1982)); and mining can only be performed on a license to mine or a lease.

On November 29, 1988, the office of the Inspector General (OIG) submitted to the BLM a final audit report entitled "User Charges for Mineral-Related Document Processing, Bureau of Land Management". The final OIG audit

report was the fifth of a series of OIG reports on user charges and collections for selected bureaus in the Department of the Interior. The final OIG audit report concluded that the BLM had generally implemented the policies and procedures prescribed in the Independent Offices Appropriation Act of 1952 (User Charge Statute), Office of Management and Budget Circular A–25, and the Department of the Interior Manual, Part 346, "Cost Recovery." However, the final OIG audit report further concluded that the Bureau had not established fees for processing 22 different types of documents or actions related to mineral exploration and development on Federal lands, and that its fees for another 221 documents or actions recovered less than the costs of processing these documents/actions. The final OIG audit report made the following five recommendations to the BLM: (1) List all mineral-related documents that the Bureau processes which provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those which accrue to the public at large; (2) determine or estimate the cost and number of each document processed; (3) establish cost recovery exemption standards and apply the standards to each document on the list; (4) for those documents to be exempted from cost recovery, prepare and maintain documentation that will leave no doubt as to considerations which led to the exemptions; and (5) for the other documents, establish and collect fees to recover processing costs.

On January 5, 1989, BLM responded to the final OIG audit report, stating that the BLM generally agreed with the recommendations contained in the final OIG audit report and would begin planning actions to implement the recommendations. The OIG recommendation #2 required an enumeration of mineral-related documents/actions processed by BLM and a determination of the related processing costs. The current fees do not cover expenses. The BLM is committed to recovering costs and is conducting a study of those mineral-related documents and actions subject cost recovery. This study is planned to be completed by May 31, 1991. One of the premises of the study is to consider establishing or revising fees for several mineral programs, including the following coal-related actions: application for a lease, exploration license, lease modification, LMU, suspension of operations and production, or a suspension of operations; application for any new or any renewal for a license to mine, license for incidental exploration, or LMU modification; and application for each instrument of transfer of a lease or an interest therein.

Upon completion of the study, in response to OIG recommendation #5, the BLM will recommend to the Department appropriate fee revisions, pursuant to the guidance and criteria set forth in OMB Circular A–25 ("User Charges") and Department Manual, Part 346 ("Cost Recovery"). If Department approval for a proposed rulemaking is obtained, the rulemaking will address, in addition to fees, certain requirements of the Chief Financial Officers Act of 1990 (CFOA) (Pub. Law No. 101–576, 104 Stat. 2838–2855, November 15, 1990). Specifically, section 205 of CFOA added section 902(a) to subtitle I of title 31, United States Code. Section 902(a) states, in part, that "[a]n agency Chief Financial Officer shall— . . . (8) review, on a biennial basis, the fees, royalties, rents, and other charges imposed by the agency for services and things of value it provides, and make recommendations on revising those charges to reflect costs incurred by it in providing those services and things of value."

Subpart 3472 Rentals and Royalties

Formerly part of subpart 3473, this subpart would contain the financial terms of leases and procedures for requesting consideration of a reduction or waiver of the royalties and rentals. The proposed rule retains the elimination of the provisions for determining appropriate royalty rates on an ad hoc basis for coal mined by underground methods, as provided in a separate final rule to provision is being redesignated and further clarified by the insertion of "a minimum of" before "8 percent". The words "a minimum of" were inadvertently omitted from the final rulemaking in January 1990. Inclusion of the words "a minimum of" accounts for those Federal coal leases that were issued or readjusted with a bonus royalty rate in excess of 8 percent. This bonus royalty rate cannot be reduced at the time of Federal coal lease readjustment or as a result of a royalty reduction application (see also proposed 43 CFR 3472.2–4(a)(4)); otherwise, the fair market value for the lease would not be being paid by the operator/lessee.

This subpart would consolidate all regulations pertaining to royalty reductions, including those that were formerly at subparts 3473 and 3485. The proposed regulations would provide: (1) Information requirements for the processing of royalty rate reduction applications; (2) that a royalty rate shall not be reduced below 2 percent of the gross value; and (3) that reduction actions shall not pertain to or affect any advance royalty paid in lieu of continued operation or any portion of the bonus royalty bid received, if any, in a competitive lease sale. The language in existing 43 CFR 3473.3–2(d) that states that ". . . in no case shall the royalty be reduced to zero percent. . . ." has been revised to read ". . . shall not be reduced below 2 percent of the gross value . . . ." This policy was established in the Final Guidelines for Royalty Reductions for Solid Leasable Minerals (Notice of Availability, 52 FR 24347, June 30, 1987).

These final guidelines and their amendment (Notice of Availability, 55 FR 6841, February 27, 1990, and Notice of Clarification, 55 FR 18401, May 2, 1990) established the five categories of royalty reduction applications. The five categories are included in this proposal at § 3472.2–4(b). Because the detailed analysis of and justification for the five categories of royalty reduction applications were previously published as guidelines for public comment following the procedures in the Administrative Procedure Act, § 3472.2–4(b) of this proposed rule is not subject to further public comment. Those guidelines, which were subsequently incorporated in BLM internal directives, are consistent with the procedures and policies of this rule. In addition, this proposed rule would provide that the total overriding royalty, payment out of production, or similar interest shall not exceed one-half of the Federal royalties established in an approved royalty reduction. See the discussion on § 3474.2–3, below.

Section 3474.2–3 Overriding Royalty

This section would be revised. All executed overriding-royalty, payment-out-of-production, or similar-interest agreements would continue to be filed in the appropriate Bureau of Land Management State Office for record purposes only. The Bureau of Land Management is not required to approve such agreements, unless an overriding royalty consideration is part of a royalty reduction application (see also 43 CFR 3474.2–3), because Federal royalty is first-payable under the Federal coal lease. An applicant for a royalty reduction will be required to submit information as to overriding royalties, payments out of production, or similar interest in accordance with § 3472.2–4.

Subpart 3473 Bonds

Formerly subpart 3474, this proposed subpart would contain several changes, codifying existing, long-standing

Department policies and procedures related to Federal coal lease, license, and LMU bonds. It would require a minimum bond of $5,000 in all instances except for a license to mine, for which a $1,000 bond issued under subpart 3440 would be required. A clarifying provision would be included allowing the authorized officer either to increase or to decrease the amount of a bond, as deemed necessary, to reflect changes in the indebtedness under the lease, exploration license, license for incidental exploration, license to mine, or LMU. This would allow sufficient latitude to adjust the bond to adequately protect the interests of the United States, while providing the authorized officer the flexibility to decrease bond amounts where warranted.

The types of security arrangements for personal bonds would be expanded to allow cash, cashier's check, or certified check, in addition to negotiable Treasury bonds. This will allow the principal flexibility in securing personal bonds, while continuing to adequately and fully protect the interests of the United States. Negotiable Treasury bonds of the United States must be of a value equal to the amount specified in the bond.

The subpart would provide for the establishment of a "mining plan bond" in lieu of individual lease bonds for Federal leases in an approved mining plan. The BLM has found that, for several operating companies, the Federal coal holdings consist of small, adjacent Federal coal leases. The operations move sufficiently rapidly that, before a bond can be adjusted in accordance with the current bonding procedures (i.e., determination of new bond coverage, recommendation to State Office, decision from State Office to lessee) to cover ongoing operations on a particular Federal coal lease, the operation has already moved off that Federal coal lease and onto an adjacent Federal coal lease. By that time, there is no longer a need for the bond revision on the first Federal coal lease. However, there is then a need to adjust the bond on the adjacent Federal coal lease, and the process begins anew. This situation is typical of single mining operations on multiple, small leases for which logical mining unit formation is not an efficient, viable, or desired option.

Therefore, the proposed regulations provide the BLM the authority to allow for mining-operations-specific, and for only one operator (for cases where there is more than one existing mining operation on a lease), bonding to cover all Federal coal leases within a specific mining operation under an approved mining plan. Such a mining-operations-specific bond would be determined on a mining-operation by mining-operation basis, as determined to be necessary by the authorized officer.

Subpart 3474 Assignments and Subleases

Formerly subpart 3453, this proposed subpart would contain several changes that reflect Department policy and improve administrative efficiency. It would: (1) Clarify the minimum information that an assignment document is required to contain; (2) clarify the information that a request for approval is required to contain; (3) provide that a license to mine may be assigned in whole only; (4) no longer require approval of assignments of overriding royalty interests; and (5) no longer require approval of designated operator agreements. In addition, the current checklist format that sets out the requirements for approving and the causes for disapproving an assignment or Sublease would be removed as redundant of compliance with the criteria for approval, as set forth in this subpart. For simplification, the checklist format would be replaced by a statement in this subpart that before an assignment or sublease can be approved, the lease account shall be in good standing and an acceptable bond shall be furnished. Further, the regulation would make it clear that a lease bond shall not be required of a sublessee, in order to ensure that double bonding does not occur. Rather the operator/lessee would continue to be liable for all terms and conditions of the lease and would be required to continue holding an adequate bond. This subpart would also clearly distinguish the effect of a partial assignment on a lease from the effect of a total assignment.

Section 3474.2–1(a)(2)(v)

This section would be revised to reflect the published Department Guidance on Coal Lease Transfer Financial Data Requirements (51 FR 24752–24755, July 8, 1986). The Bureau of Land Management requires a description of all consideration or value paid or promised for an assignment, whether cash, property, future payments, or any other type of consideration paid or promised, pursuant to the February 21, 1986, decisions of the Secretary of the Interior. Those decisions addressed the type and procedural content of the Federal Coal Management Program, and are used by the Bureau of Land Management to assist in evaluating coal tracts being considered for lease offering determining whether bids received for those coal leases constitute fair market value and for monitoring operator/lessee compliance with section 2(a)(2)(A) of MLA.

Subpart 3475 Relinquishment, Cancellation, Termination, and Expiration

Section 3475.2 Relinquishments

This section would be revised to provide that a bond subject to the continued obligation of the lessee or licensee shall be maintained until the authorized officer accepts the relinquishment. This will ensure that any outstanding rentals or royalties are paid and that adequate reclamation of license or exploration operations occurs prior to acceptance. The effective date of a relinquishment would be revised to be the date that the relinquishment is filed or the date that the lease or license obligations (including payment of rental, royalty, and advance royalty) have been met, whichever is later. Leases and licenses would remain in full force and effect, and all obligations would continue, until the later of these two dates.

Section 3475.4 Terminations

Existing regulations would be corrected to reflect that LMU's and all leases subject to MLA diligence, as defined at § 3400.0–5, not just those leases issued or readjusted on or after August 4, 1976, would terminate pursuant to authority of law if they fail to meet MLA diligence. These changes reflect Department policy and improve administrative efficiency.

Section 3475.5 Expirations

This section would be added to the regulations to state that any lease subject to MLA diligence would expire pursuant to authority of law at the end of its primary term if it fails to maintain continued operation either in the last year of the primary term or in any year after the primary term. In addition, this section would make it clear that exploration licenses, licenses for incidental exploration, and LMU's expire by operation of law at the end of their terms, without further action by the Bureau of Land Management. Licenses to mine expire pursuant to authority of law at the end of their terms.

Subpart 3476 Continuation of Leases—Readjustment of Terms

This subpart on lease readjustment is designed to make the terms and conditions of Federal coal leases comply, upon readjustment, with statutory and administrative requirements that have not yet been applied to, or incorporated in, the lease

since its issuance. The process would be revised substantially. The self-regulatory procedures regarding the two-step Notice of Intent to Readjust/ Notice of Readjusted Lease Terms and Conditions have been deleted. It is sufficient to state that the readjustment Decision, which constitutes the final action by the Bureau of Land Management and transmits the readjusted lease terms and conditions, will be provided to all record-title holders prior to the anniversary date on which the lease is readjusted. Existing §§ 3451.1(b), (c), and (d) would be removed entirely. Moreover, §§ 3451.1(c)(2) and 3451.2(b), (c), and (e) were revised on September 26, 1988 (53 FR 37296), so that the decision transmitting the readjusted lease terms no longer allows for the filing of objections by the lessee(s). These sections are simply being redesignated in this proposed rule and are not subject to further public comment.

Subpart 3477 Logical Mining Unit Applications

The subject matter of this subpart (processing of logical mining unit (LMU) applications) would be separated from LMU diligence requirements (see subpart 3485). Previously codified at subpart 3487, this section would be amended to make technical corrections and to reflect the proposed regulatory diligence system. Certain changes, noted below, reflect Department policy in implementing diligence requirements for LMU's, as published on August 29, 1985 (50 FR 35145).

Section 3477.2–2(b)

A requirement has been added stating that, if the LMU will contain at least one Federal coal lease that was issued prior to FCLAA and that is not yet subject to MLA diligence, the LMU application must contain a statement of consent from such lessee(s). This requirement implements section 2(d)(5) of MLA (30 U.S.C. 202a(5)).

Section 3477.2–3(b)

The requirement that the notice of availability of a proposed LMU or LMU modification be mailed to the surface and coal owners would be deleted. Prior to LMU approval, the LMU applicant must have obtained permission to enter and mine the coal from all coal/surface owners; otherwise, the LMU cannot be approved. If a Federal coal lease was issued prior to August 3, 1977 (the date of enactment of SMCRA), the lease itself conferred to the lessee the right to enter and mine the coal. For such leases, any non-Federal surface owners cannot prevent mining; but, they must be compensated pursuant to the various stock raising/homestead Acts under which the surface of the land was originally patented. If a Federal coal lease was issued on or after August 3, 1977, the surface-owner consent requirements already exist as an integral part of the leasing process. Where the coal is non-Federal, the LMU applicant must demonstrate, by copy of the written consent, that the LMU designated operator has the right to enter and mine the coal. If such consent is not included in the LMU application, the LMU application will not be approved by the authorized officer. Experience during the past 8 years has shown that it is administratively inefficient, burdensome, and unnecessary to notify the surface and coal owners of a pending LMU application, since such notice only serves to describe the proposed mining operation, and all surface owners must have already given their consent to mine prior to approval of the LMU.

Section 3477.2–4(a)

The existing requirement at § 3487.1(e)(1) that a resource recovery and protection plan (R2P2) or R2P2 modification be submitted within 3 years from the effective date of LMU formation would be changed. Proposed § 3477.2–4(a) states that the R2P2 or R2P2 modification must be submitted not later than 3 years from the effective date of the "most recent Federal coal lease that is subject to MLA diligence prior to LMU approval." This change reflects the fact that LMU diligence is governed by the lease-specific diligence requirements of the individual Federal coal leases proposed to be included in the LMU.

Since the individual lease requirement for R2P2 submittal is no later than 3 years after the lease becomes subject to MLA diligence, that submission requirement cannot be extended by a later effective date of approval for the LMU. However, were the "oldest" lease subject to MLA diligence prior to LMU approval to be the explicit governing lease for R2P2 submittal, the situation would arise where the LMU would be in violation of the R2P2 submittal requirement prior to LMU approval.

For example, assume that a lease issued on January 1, 1980, and a lease issued on January 1, 1986, were to be included in an LMU that would have an effective approval date of January 1, 1988. The R2P2 for the first lease must have been submitted not later than December 31, 1982. If the "oldest" lease (issued January 1, 1980) were to govern the R2P2 submittal for the LMU, the R2P2 for the LMU would be due 5 years prior to the LMU effective date, which would be a violation of the LMU approval stipulations subjecting the LMU to MLA diligence, and the LMU could not be approved. Since the "most recent" lease (issued January 1, 1986) governs, the R2P2 for the LMU would be due not later than December 31, 1988, 1 year after the effective date of LMU approval. This clarification sets out in regulation existing, long-standing Department policy for the application of MLA diligence to LMU's. See Logical Mining Unit Application and Processing; Guidelines (50 FR 35145, August 29, 1985).

Section 3477.2–4(e)

This section has been modified to allow the crediting of certain rentals against production royalties for producing leases that are not yet subject to MLA diligence and that are contained in an approved LMU. This reflects Department policy, as addressed in *Black Butte Coal Co.*, 109 IBLA 254 (1989).

Subpart 3478 Suspensions

This would be a new subpart addressing all three types of suspensions provided by MLA: suspensions of operations and production (Section 39 of MLA, 1982); suspensions of operations (Section 7 of MLA, 1970); and *force majeure* suspensions (strikes, the elements, or casualties not attributable to the lessee, as provided by section 7(b) of MLA, 1982). The concepts were first published as "Coal and Solid Mineral Lease Suspension Guidelines" (June 15, 1987). With one exception which extended the 10-year diligent development period for a Federal coal lease with an approved Section 39 suspension of operations and production, addressed as a final rule (53 FR 49984, December 13, 1988), the 1987 suspension guidelines would be incorporated in their entirety in this subpart 3478. A discussion of the types and effects of the three suspensions follows.

A section 39 suspension of operations and production is granted by the Secretary when it is deemed to be in the interest of conservation. "In the interest of conservation" includes not only maximizing recovery and avoiding or minimizing waste or loss of leased coal but also avoiding or minimizing damage to other natural resources, such as other minerals, wildlife, water quality, and air quality. An approved section 39 suspension of operations and production prevents the operator/lessee from beneficial use of the leased lands. However, already-mined coal may be

sold from the lease, casual use and mine-maintenance activities are allowed, reclamation must be conducted, and consideration must be given to public health and safety. When a section 39 suspension of operations and production is approved, all other lease obligations are suspended and all deadlines are extended for the duration of the approved suspension. The extension of deadlines includes, but is not limited to, the 10-year diligent development period and the lease readjustment term.

Prior to August 4, 1976, section 7 of MLA (30 U.S.C. 207 (1970)), provided for a "suspension of operation" for coal. Such a suspension of operations was "not to exceed six months at any one time when market conditions are such that the lease cannot be operated except at a loss." This provision of section 7 was redundant with section 39 of MLA which allows a reduction in royalty rate for those leases that cannot be successfully operated under their terms. When section 7 was amended by FCLAA on August 4, 1976, the provision for "suspension of operation" was deleted. (Cf. 30 U.S.C. 207 (1970) with 30 U.S.C. 207(b) (1988)). Therefore, only those coal leases issued prior to August 4, 1976, that are not yet subject to MLA diligence, may qualify for a suspension of operations and only if such suspension of operations is so provided by the specific terms of the lease. An approved suspension of operations prevents the operator/lessee from beneficial use of the leased lands. However, already-mined coal may be sold from the lease, casual use and mine-maintenance activities are allowed, reclamation must be conducted, and consideration must be given to public health and safety. When a suspension of operations is approved, only the lease-specific obligations regarding minimum production/minimum royalty are suspended. All other lease terms and conditions, including the running of the lease readjustment term, remain in full force and effect.

Suspensions of Federal coal leases as a result of "strikes, the elements, or casualties not attributable to the lessee" are referred to as *force majeure* suspensions. *"Force majeure"* means an unexpected or uncontrollable event that may excuse a party from contractual obligations. The MLA specifically provided for *force majeure* suspensions for Federal coal leases not yet subject to MLA diligence (30 U.S.C. 207 (1970)) and for Federal coal leases that are subject to MLA diligence (30 U.S.C. 207(b) (1988)). Beneficial use under a lease is not affected by an approved *force majeure* suspension. Production may occur until such time as the pre-suspension production rate is again achieved, at which time the *force majeure* suspension terminates.

"Strikes" includes, but is not limited to, labor strikes affecting the mine, processing facility or transportation of coal. "Elements" refers to earth, wind, and fire and includes events caused by natural forces such as earthquakes. Failure of equipment due to seasonal temperature extremes or mine shutdown due to seasonal conditions is not considered to be included in the term "elements." "Casualties" are those events that happen without design or without being foreseen. In ordinary usage, the term casualties is applied to accidents which happen suddenly and unexpectedly, and not in the usual course of events (*Bennett* v. *Howard*, 195 S. W. 117 (Ky. 1917)). "Casualties" are events that could not be avoided by prudence and sound judgment.

For leases not yet subject to MLA diligence, a *force majeure* suspension that is provided for by a lease-specific term does *not* prevent compliance with MLA as amended by FCLAA (e.g., compliance with the 10-year holds and has held provision of section 2(a)(2)(A) of MLA). For such leases, an approved *force majeure* suspension relieves the lease-specific minimum production/minimum royalty, diligent development, and continued operation terms and conditions. No other lease terms are suspended and no deadlines are extended by a *force majeure* suspension for leases not yet subject to MLA diligence.

For leases subject to MLA diligence, an approved section 7(b) *force majeure* suspension *suspends* diligent development (however, production must have commenced after the lease became subject to MLA diligence for the lease to qualify for such a suspension), continued operation and payment of advance royalty in lieu of continued operation, the MLA section 2(a)(2)(A) producing obligation and the MLA section 2(d) 40-year mine-out requirement. For such leases, an approved section 7(b) *force majeure* suspension *extends* the 3-year requirement for submission of an R2P2, 10-year diligent development period (provided production commenced after the lease became subject to MLA diligence), 40-year mine-out period for LMU's, annual continued operation period, and 10-year "holds and has held" period under section 2(a)(2)(A) of MLA. An approved *force majeure* suspension does not extend the readjustment term of the lease. No other lease terms are suspended and no other deadlines are extended by a *force majeure* suspension for leases that are subject to MLA diligence.

PART 3480—COAL EXPLORATION AND MINING OPERATIONS

Subpart 3481 General Provisions

Section 3481.1 General Obligations of the Operator/Lessee

Section 3481.1(a)

The reference to 30 CFR Part 815 (Office of Surface Mining Reclamation and Enforcement permanent performance standards for coal exploration) would be removed to reflect the Bureau of Land Management's exploration responsibilities. The Bureau of Land Management administers all exploration operations on unleased Federal lands and on leased Federal lands outside the area of an approved SMCRA permit. Applications for exploration licenses, licenses for incidental exploration, and exploration plans on unleased Federal coal and on leased Federal coal outside the area of an approved SMCRA permit, respectively, would continue to be submitted to the Bureau of Land Management authorized officer for approval. Under SMCRA, the regulatory authority would retain the responsibility for exploration for non-Federal coal contained in an approved SMCRA permit area and assume all SMCRA responsibility for exploration for Federal coal within the area of an approved SMCRA permit. The Bureau of Land Management authorized officer would retain the authority to direct the data collection to ensure that the authorized officer has adequate information to verify the maximum economic recovery of the coal resource. In addition, the authorized officer would retain the authority to direct any proposed exploration operations and to obtain all exploration data. When an operator/lessee requests approval to conduct exploration operations as a part of a SMCRA permit approval or SMCRA permit revision, the regulatory authority will obtain the concurrence of the Bureau of Land Management authorized officer with respect to data collection and siting of explorations. Copies of all data collected during exploration would be submitted to the Bureau of Land Management authorized officer in accordance with § 3482.4, and data considered to be proprietary would be held confidential in accordance with § 3481.2.

Section 3481.1 (c) and (d)

To make it clear that the Bureau of Land Management is responsible for ensuring the protection of all in-place coal during the pre-mining, mining, and post-mining phases of operations, the words "recoverable" and "reserves" would be removed. To further define and clarify the conditions that could affect mining operations, "caving" would be replaced by "failure", and "spoil failure" would be added.

Section 3481.1(g)

Former § 3486.2(a) would be moved to § 3481.1(g) for clarification.

Subpart 3482 Exploration Plans

The existing title at 43 CFR Subpart 3482 ("Exploration and Resource Recovery and Protection Plans") would be changed to "Exploration Plans." Resource recovery and protection plans would be addressed in revised subpart 3483. As with mining operations, exploration operations are subject to regulation under both MLA and SMCRA. MLA provides the Secretary with general authority (e g., 30 U.S.C. 189) to require approval before a licensee or lessee conducts exploration operations, and specifically requires approval of an operations and reclamation plan if a lessee may cause a significant disturbance of the environment (30 U.S.C. 207(c)). Read together, these MLA provisions require the Bureau of Land Management to exercise authority to approve an operations and reclamation plan for exploration activities on Federal lands. SMCRA provides the Secretary general authority to require approval on non-Federal coal before an operator/lessee conducts exploration operations that substantially disturb the land surface, and specifically requires written approval if more than 250 tons of coal are to be removed (30 U.S.C. 1262(a) and (d)). For Federal lands, 30 U.S.C. 1262(d) specifically states that section 4 of FCLAA (30 U.S.C. 201(b)) applies. Under section 4 of FCLAA, the Bureau of Land Management is the administering agency for exploration activities for Federal coal which has not been leased. Moreover, section 7(c) of MLA (30 U.S.C. 207(c)) requires approval of any activity which might cause a significant disturbance to the environment. The Secretary of the Interior has interpreted this, since the 1982 regulations, to include Bureau of Land Management approval of exploration activities on leased Federal coal.

The regulations in subpart 3482 implement all of these authorities for exploration operations for leased Federal coal. A prerequisite is issuance of an exploration license, lease, or license to mine. The regulations in subpart 3482 establish a standard consistent with the regulations issued by the Office of Surface Mining Reclamation and Enforcement for exploration permits and those operations activities for which they are responsible (30 CFR part 772).

Current Bureau of Land Management regulations limit their applicability to exploration operations on exploration licenses and Federal coal leases outside a SMCRA permit area and inside a SMCRA permit area prior to the commencement of mining operations. This has created confusion for lessees and the various Federal and State agencies. To be clear, the proposed regulations, pursuant to MLA, apply to all exploration operations: (1) On unleased Federal coal; (2) on leased Federal coal prior to issuance of a permit; and (3) on leased Federal coal within an approved SMCRA permit with respect to data collection and the siting of exploration operations. The Office of Surface Mining, Reclamation and Enforcement regulations in title 30 CFR specifically exempt exploration operations on Federal lands subject to 43 CFR subparts 3480–3487 (30 CFR 772.1).

Section 3482.1 Submission of Exploration Plans

This section would contain all information relating to exploration plans. The requirements for the submission of an exploration plan and the regulations applying to exploration for Federal coal would be consolidated. For clarification and consolidation, all information pertaining to resource recovery and protection plans would be consolidated in subpart 3483.

Section 3482.1(a)

The references pertaining to other agency responsibilities for exploration on Federal lands would be removed, clarifying the Bureau of Land Management's responsibilities for exploration activities. Also, the reference to exploration prior to commencement of mining operations would be removed from the last sentence of this paragraph.

Section 3482.1(a)(1)

The words "leased or licensed" would be removed as unnecessary. The definition of casual use would be removed from this section as it is already defined at § 3400.0–5.

Section 3482.1(b)

This section has been amended to address tests of coal extracted during exploration on leased Federal coal. The proposal includes a clarification of the limitations on commercial use or sale of coal extracted during exploration. This section sets out the specific information to be included in applications for an exploration plan where the coal extracted would be used for testing purposes. Revised national standards pertaining to commercial sale or use of coal extracted for testing purposes during exploration are necessary to ensure application of minimum standards for control of the potential harmful effects from coal exploration activities. This change does not limit or affect the role and authority of the U.S. Forest Service in setting criteria regarding exploration operations on lands under its jurisdiction.

Section 3482.1(c)

The number of copies of exploration plan that the operator/lessee is required to submit to the authorized officer would be reduced from 5 to 3 as a cost savings to the applicant and because of the reduced needs of the authorized officer. The words "recoverable" and "reserves" would be removed (See discussion under section 3481 (c) and (d), above).

Section 3482.1(d)(6)

This requirement for exploration plan content (which addresses trenching, excavating, or other methods that remove more than minor amounts of coal to be removed during exploration, a description of the methods to be used to determine those amounts, and the proposed use of the coal removed) would be revised because it is necessary for inspection and enforcement of the lease or license.

Section 3482.1(d)(7)

The reference to other agency responsibilities during exploration would be removed (see the discussion of agency jurisdiction above).

Section 3482.1(d)(8)

The words "tied to the relevant public land survey" would be added so that each submitted map would be referenced to the established cadastral grid.

Section 3482.2 Action on Exploration Plans

The title would be changed by adding "exploration." This section would be separated into subtopics to provide readily identifiable actions taken for the approval and disapproval processes. All bond provisions would be consolidated in subpart 3473. Again, references to

other agencies that were previously associated with exploration on Federal coal would be removed.

Section 3482.3 Modification of Exploration Plans

This section was previously "Mining operations maps," which would be moved to § 3483.4. Paragraph (a) would be redesignated from § 3482.2(b)(1), but would otherwise not be changed. Paragraph (b) is presently § 3482.2(c)(1) and would be changed to provide for consultation by the authorized officer with the appropriate "surface" management agency before approving any changes or modifications proposed for inclusion in the exploration plan. The appropriate surface management agency, if other than the Bureau of Land Management, would be contacted as necessary during the revision review process before a modification is approved or disapproved. The regulatory authority consultation requirement would be removed because it would not be a point of contact for exploration on Federal coal outside the area of an approved SMCRA permit.

Section 3482.4 Collection and Submission of Data

This section is presently § 3410.4 and would be moved in its entirety to subpart 3482 in order to consolidate all requirements for exploration operations.

Section 3482.4(a)

The ground- and surface-water collection requirement would be clarified to state that ground- and surface-water data shall only be collected during exploration operations in accordance with an approved exploration plan. The requirement would ensure that the proper steps are taken to protect water resources and to allow for the possible use of specific holes for either water wells or water-monitoring wells and to ensure the safety of people, livestock, and wildlife.

Section 3482.4(b)

The term "licensee" would be changed to "operator/lessee" to reflect the broader sense of exploration operations as proposed in this rule.

Section 3482.4(c)

The portion of present § 3410.4(b) that deals with confidential data would be placed under a new heading for clarity and simplification.

Section 3482.4(c)(2)(v)

This requirement for exploration report content (which addresses maps showing the surveyed location and elevations of all holes drilled, other excavations, the coal outcrop lines, and all logs with appropriate designation and location descriptions) would be revised because it is necessary for production verification. On leases, this requirement is used to monitor lessee compliance with diligent development pursuant to proposed section 3484.

Section 3482.4(d)

This section is presently § 3485.1 Reports. It would be consolidated in the "Exploration Plans" subpart for clarity and simplification.

Section 3482.5 Performance Standards for Exploration

To simplify and to provide a more logical sequencing of the standards associated with exploration, the performance standards for surface and underground mining operations would be moved to Subpart 3483.

Section 3482.5(a)

Due to the clarification of the Bureau of Land Management's exploration responsibilities, all references to other agencies would be removed. Surface management agencies, other than the Bureau of Land Management, would still be consulted prior to lease or license issuance.

Section 3482.5(c)

The requirements that drill holes be plugged and capped with a permanent plugging material that is unaffected by water and hydrocarbon gases, and that drill holes that are deeper than the stripping limits of a pit(s) be plugged with a suitable material through the thickness of the coal bed(s) or mineral deposit(s) and through aquifers, would be consolidated. The consolidation would create a safer, more manageable, and workable exploration plugging requirement. There would be a new plugging requirement that all exploration drill holes are required to be plugged with cement from the bottom to the top of the hole, unless otherwise approved by the authorized officer. Cement would be defined at § 3400.0–5 as an American Petroleum Institute (API) oil-well cement, mixed in accordance with API standards.

Section 3482.5(e)

Paragraph 3484.1(a)(4) would be simplified by removing restrictive wording, by changing the citation of the confidentiality regulation from § 3481.3 to § 3481.2, and redesignating the paragraph. In addition, drill cores would have to be retained for 5 years, versus the existing retention of 1 year (43 CFR 3484.1(a)(4)). Experience by Bureau of Land Management field offices during the past 8 years has indicated the need for the increase in retention in order to further enhance data correlation during the progress of operations.

Section 3482.5(f)

Paragraph 3484.1(a)(5) would be redesignated as paragraph 3482.5(f).

Section 3482.5(g) through (q)

The regulatory cross-reference to the applicable performance standards for exploration at 30 CFR 815.15 would be removed. During the past 8 years under the Federal Coal Management Program, many industry and environmental groups have been confused as to exactly which SMCRA performance standards, if any, applied to exploration for leased Federal coal. To clarify the applicable performance standards, the Bureau of Land Management has consolidated in § 3482.5 all performance standards that apply to any exploration on leased Federal coal. Therefore, the same performance standards would exist for exploration on both non-Federal and Federal lands. The Bureau of Land Management believes that this will ensure nationwide consistency in the implementation of the exploration portion of the Federal Coal Management Program and eliminate the confusion that has existed.

Section 3482.6

Existing § 3484.2(a) would be redesignated as § 3482.6.

Subpart 3483—Resource Recovery and Protection Plans (R2P2's) and Mining Plans

The proposed rule would clarify the application of the terms "resource recovery and protection plan" and "mining plan."

Section 3483.1 Resource Recovery and Protection Plan

The proposed rule would retain the term "resource recovery and protection plan (R2P2)", which is the plan required to be submitted to the Bureau of Land Management within 3 years of a lease becoming subject to the amended section 7 of MLA requirements (30 U.S.C. 207(c)). The rule would detail the submission requirements for the 3-year R2P2.

Section 3483.2 Mining Plans

Approval of mining plans on Federal lands is a requirement of MLA (30 U.S.C. 202a(2) and 30 U.S.C. 207(c)). The MLA (30 U.S.C. 207(c)) provides that, prior to taking any action on a lease that might cause a significant disturbance of the environment, the operator/lessee is

required to submit an operation and reclamation plan (i.e., mining plan) for the approval of the Secretary of the Interior. The proposed regulations retain the Secretary as the official responsible for approving mining plans for Federal coal leases issued under MLA and clarify the authority of the Bureau of Land Management with respect to all other MLA functions.

The definitions of "resource recovery and protection plan" and "mining plan" would be revised. The resource recovery and protection plan is the plan that is submitted solely to meet the 3-year submittal requirement of section 7(c) of MLA (30 U.S.C. 207(c) (1982)). The resource recovery and protection plan submitted as part of the permit application package, pursuant to SMCRA, would be called the "mining plan". Where the 3-year resource recovery and protection plan was submitted earlier than, and not as part of, the permit application package, the Bureau of Land Management expects the mining plan portion of the permit application package to be an updated version of the 3-year resource recovery and protection plan.

This proposed rule would not alter the role of the Office of Surface Mining Reclamation and Enforcement in any aspect of the Federal Lands Program (30 CFR chapter VII, subchapter D) or the roles of the States under State-Federal Cooperative Agreements (30 CFR part 745). It would reiterate that no coal mining operations may be conducted on lands containing Federal coal without compliance with all established requirements, including an approved mining plan.

This section would set out procedures for processing mining plan approvals and modifications, based on the content of the mining plan. The proposed regulations would add a section to differentiate between major and minor MLA mine-plan modifications. A major mine-plan modification is one that requires adherence to the same procedures as those used for the original approval of the SMCRA permit. A minor mine-plan modification does not require a change in the already approved SMCRA permit. This proposed rule would clarify the Bureau of Land Management administrative procedures for approval of mine-plan modifications.

Sections 3483.3 through 3483.6

These sections would contain regulatory provisions that were not substantively changed from the existing regulations relating to mining plan content, mining operations maps, general performance standards, and abandonment of mining operations, except that they have been redesignated as stated above from §§ 3482.1(b), 3482.3, 3484.1 (b), (c), (d), and (e), and 3482.2, respectively. The requirement in existing § 3482.2(a)(2) that no R2P2 will be approved unless the bond has been determined to be adequate would be replaced with the proposed language at § 3483.3, which states that the R2P2 shall address, and the mining plan shall contain, all established requirements over the life-of-the-lease or life-of-the-LMU. The established requirements include compliance with proposed subpart 3473 related to bonding for the individual leases and/or bonding for LMU's. Performance bonds for reclamation of mining operations pursuant to SMCRA are regulated by the Office of Surface Mining under 30 CFR chapter VII. The requirement in existing § 3484.2(b) related to abandonment would be moved to proposed § 3483.6—Abandonment of mining operations.

Section 3483.3(c)(4)

The requirement in existing § 3482.1(c)(3)(iv), that the description of the proposed mining operation address the method of abandonment of operations proposed to protect the unmined recoverable coal reserves and other resources, would be changed to protect the unmined coal and other resources. This change is necessary to ensure that all in-place coal that would remain upon abandonment is protected, not just the recoverable coal reserves portion.

Section 3483.3(e)

The general reclamation schedule for the life-of-the-mine in existing § 3482.1(c)(5) would be changed to a general reclamation schedule for the entire lease. This change addresses both situations where the life-of-the-mine would not cover an entire lease and situations where the life-of-the mine would extend off-lease to non-Federal coal. This change would more accurately describe the responsibilities of the Bureau of Land Management pursuant to MLA.

Section 3483.3 (f) and (g)

Copies of all data and information collected during exploration conducted within the area of an approved SMCRA permit would be submitted to the Bureau of Land Management authorized officer in accordance with § 3483.3(f), and data and information considered by the authorized officer to be proprietary would be held confidential in accordance with section 3483.3(g).

Section 3483.5(b)(2)

The language at existing § 3484.1(c)(2) that the operator/lessee must adopt measures consistent with known technology in order to prevent subsidence or, where the mining method used requires subsidence, to control subsidence, maximize mine stability and maintain the value and use of surface lands would be revised. Proposed § 3483.5(b)(2) states that the operator/lessee of an underground coal mine shall adopt measures consistent with known technology in order to prevent or control subsidence where required. The specific requirements for the prevention and/or control of subsidence are established by the Office of Surface Mining pursuant to SMCRA, as implemented at 30 CFR chapter VII.

Subpart 3484 Diligence Requirements

During the process of preparing proposed revisions of the regulations at 43 CFR part 3480, a Bureau of Land Management task force conducted an in-depth review of the current diligent development and continued operation requirements. On the basis of this review and in conjunction with a wealth of experience obtained through Federal coal lease administration since enactment of FCLAA, a proposal to amend the existing regulations implementing diligent development and continued operation was developed.

In FCLAA, Congress added specific diligence requirements. For existing Federal coal leases, FCLAA added section 2(a)(2)(A) to MLA, which disqualified entities from being issued any mineral lease under MLA if the entity held a Federal coal lease for 10 years without producing coal in "commercial quantities." For new Federal coal leases (i.e., those made subject to MLA diligence by issuance, readjustment, modification, or voluntary election), FCLAA added section 7(a) a new requirement for production in "commercial quantities" to MLA and established two points during the life-of-the-lease in which the production in "commercial quantities" must be met in order to avoid lease termination/cancellation. One point occurs at the end of each 10-year period for the life-of-the-lease, and the second occurs only at the end of the 20-year primary term. In section 7(b) of MLA, FCLAA retained the Federal coal lease conditions of diligent development and continued operation to encourage energy production and to discourage speculation. The 1979 Federal Coal Management Program regulations

equated the 10-year production in commercial quantities requirement with diligent development and adopted a 1-year producing in commercial quantities requirement for the continued operation definition.

Of primary concern to the task force was the definition of commercial quantities. "Commercial quantities" was not part of the coal provisions of MLA prior to FCLAA. Although FCLAA uses the term "commercial quantities" in section 7(a) of MLA, Congress did not quantify the term, thereby deferring to the Secretary of the Interior the promulgation of an appropriate definition.

Prior to September 1985, the only analysis of an appropriate definition for commercial quantities was performed by the Conservation Division of the U.S. Geological Survey. This analysis used a pragmatic approach based on the 40-year mine-out provision required by FCLAA for LMU's (30 U.S.C. 202a(2)), resulting in a commercial quantities definition that required a minimum annual production of 2½ percent of the lease-specific recoverable coal reserves (43 CFR 3400.0–5(i)(2), 44 FR 42584, 42610, July 19, 1979). This definition was amended in the regulations promulgated in July 1982 to reflect on-the-ground conditions based on the observed production of those Federal coal lessees pre-dating FCLAA that were diligent in developing and mining Federal coal (47 FR 33154, July 30, 1982). Such concern, in conjunction with an increase in the amount of time required to obtain the necessary Federal, State, and local government permits to mine, resulted in a revised definition of commercial quantities to mean 1 percent of the lease-specific or LMU-specific recoverable coal reserves (30 CFR 211.2(a)(7), 47 FR 33154, 33180, July 30, 1982, redesignated at 43 CFR 3480.0–5(a)(6), 48 FR 41589, 41590, September 16, 1983).

In September 1985, the Department produced the first in-depth, analytical study designed to identify a holding fee for nonproducing Federal coal leases. The study, entitled "Analysis of Options for Amending the Mineral Leasing Act Sections 2(a)(2)(A) and 7," represented the position of the Department and was submitted to the Congress. The study recommended that payment of a holding fee (e.g., advance royalty), based on an assumed annual production of 0.3 percent of recoverable coal reserves, was sufficient to discourage speculative holding of Federal coal leases. Although the market conditions upon which the 1985 study was based have changed somewhat in the intervening 5 years, the Bureau of Land Management believes that a holding fee, based on 0.3 percent of the recoverable coal reserves, is still a reasonable incentive for timely development.

Experience by Bureau of Land Management field offices during the past 8 years under the 1982 regulatory diligence system has shown that for some operators/lessees that are diligently producing at design capacity under long-term contracts with coal consumers, the 1 percent requirement is excessive and is not necessary to ensure conformance with the anti-speculation intent of Congress in enacting FCLAA. Were the 1 percent requirement to be retained, the operator/lessee would be forced to relinquish reserves which would not be economically recoverable by other operations. Such relinquishments would not further Congressional intent of ensuring conservation of the resource and maximum economic recovery. It is consistent with Congressional intent, set out in FCLAA to encourage maximum economic recovery of coal reserves from existing leases and to discourage the speculative holding of such leases, to allow such operators/lessees to continue production at the maximum level or volume under available coal-sales contracts rather than continuing to require them to produce an unrealistic amount of coal. Continuing to require operators/lessees to meet an unrealistic definition of "commercial quantities" could lead to forfeiture of leases and interruption, if not abandonment or bypass, of Federal coal reserves. Clearly such a situation is contrary to the intent of Congress in FCLAA that such resources be produced to the maximum extent possible (see 30 U.S.C. 201(a)(3)(C) (1988)).

The Bureau of Land Management believes that the amount of production that discourages speculation (commercial quantities for advance royalty in lieu of continued operation of 0.3 percent of recoverable coal reserves) also demonstrates that a lessee is diligently developing the lease (commercial quantities for diligent development of 0.3 percent of recoverable coal reserves). That is, the 0.3 percent should be the minimum production level against which to measure diligent development and continued operation.

Production of 0.3 percent of recoverable coal reserves is also appropriate to establish commercial quantities for section 2(a)(2)(A) of MLA. Since all three of the uses of the term "commercial quantities" (including the lease-duration language of section 7(a) of MLA), as set out in the regulations, are intended to discourage speculation and encourage timely development of Federal coal leases, 0.3 percent of recoverable coal reserves is an appropriate minimum production standard for all lessees. Similarly, advance royalty, which is monetarily equivalent to the minimum production requirement of continued operation, would be amended to reflect this change in the amount for continued operation.

The existing regulations allow continued operation commercial quantities (1 percent of the recoverable coal reserves) to be measured either during the continued operation year in question or during a 3-year period, consisting of the current continued operation year plus the 2 preceding continued operation years (i.e., 3 times the annual continued operation commercial quantities requirement produced during 3 continued operation years). The 3-year period was established to give flexibility in meeting the 1 percent commercial quantities requirement. Because the annual production requirement for continued operation would be lowered to a minimum of 0.3 percent of the recoverable coal reserves per continued operation year, continued operation commercial-quantities production would only be measured annually. The flexibility of the 3-year alternative would no longer be necessary.

The Bureau of Land Management also requests public comment on a diligence alternative. The alternative would set development "milestones" in lieu of a strict production level for diligent development. For example, diligent development could be defined as "a sequence of successive steps required to be taken to commence mining operations, including the issuance of a mining permit pursuant to SMCRA, approval of a mining plan pursuant to MLA, and/or payment of royalty prior to the end of the 10-year diligent development period on Federal coal produced from the lease."

Such a definition, applicable to diligent development only, would ensure that there is compliance with all established requirements, as defined in this proposed rule (i.e., development of an administratively complete permit application package while allowing enough time for completion of the attendant environmental documentation). Such documentation would include information that would be sufficient for approval, or approval with modification, of the proposed mining operation by the Secretary of the Interior, while allowing the Federal coal

lease 10 years, as required by 30 U.S.C. 207(a), to be producing in commercial quantities.

Commercial quantities for diligent development would not be defined as a fixed percentage of recoverable coal reserves but would merely require payment of production royalty, by the end of the 10th lease year, on coal produced from the particular Federal coal lease. This would entail a significant expenditure on the part of the operator/lessee, require the opening of a producing mine, and provide more time to commence Federal production on which royalties would be paid prior to encountering lease termination pursuant to authority of law under amended section 7(a) of MLA.

Under this alternative, continued operation could be defined as production royalty being paid in any continued operation year. Payment of royalty to the Federal Treasury (and thus to the States, as well) is in the public interest and furthers the anti-speculation intent of Congress in enacting FCLAA; lessees will not likely pay for resources they do not intend to produce eventually. The annual production level for each producing Federal coal lease would then be market-driven (i.e., established by coal-supply contracts).

Also under this alternative, in order to maintain a benchmark against which to measure potential production shortfalls for continued operation, a fixed commercial quantities amount would still be required for payment of advance royalty. Since this fixed quantities amount (0.3 percent in this alternative proposal) would be paid in lieu of zero (no) production, it is directly analogous to the "holding fee" for the nonproducing Federal coal leases concept addressed in the Department of the Interior's study entitled "Analysis of Options for Amending the Mineral Leasing Act Sections 2(a)(2)(A) and 7".

Comments are specifically requested on the proposed commercial quantities requirement, retaining the current regulatory commercial quantities amount of 1 percent of the recoverable coal reserves, adopting the hybrid discussed above, or some other appropriate definition(s) of commercial quantities.

The Department of the Interior proposes to retain the concept of equating the section 7(b) requirement that: "Each lease shall be subject to the conditions of diligent development . . . ." with the section 7(a) requirement of producing-at-the-end-of-10-years. However, the proposed regulation eliminates the imposition of a continued operation requirement prior to the end of the 10-year diligent development period (see existing definition of "continued operation year", 43 CFR 3480.0–5(a)(9)). In the 14 years of administering the FCLAA-imposed requirements of diligent development and continued operation in accordance with the regulations promulgated in December 1976, it has become apparent that this aspect of the regulatory diligence system, which established requirements for "good-faith" lessees that have begun producing coal from the Federal leases, needs to be modified to reflect on-the-ground conditions more properly. Automatically subjecting a Federal coal lease to continued operation upon achieving diligent development requires an operation that has just come "on line" to increase production immediately from a 1 percent measured over a 10-year period to 1 percent measured annually, an increase in production of nearly 10-fold.

Under the existing regulatory diligence system, a lessee that produces commercial quantities for diligent development in the first diligent development year is required then to produce in commercial quantities annually to satisfy its continued operation requirement. Therefore, by the end of the 10-year diligent development period, the lessee could have had to produce 10 percent of the recoverable coal reserves to maintain commercial quantities production to satisfy the regulatory diligent development and continued operation requirements.

Conversely, lessees that delay production in the hope that higher market prices will be available in the future or because they are unable to obtain a sales contract, do not have any obligations during the 10-year diligent development period other than to have produced coal in commercial quantities at the end of ten years. Therefore, these lessees would only have to produce 1 percent over the same 10-year period because the continued operation requirement has not been reached.

In order to treat lessees holding leases subject to MLA diligence equally, the Bureau of Land Management proposes to apply the literal requirements of section 7(a) of MLA, which states, in relevant part: "Any lease which is not producing in commercial quantities at the end of ten years shall be terminated." Leases subject to MLA diligence includes: (1) leases issued after August 4, 1976; (2) leases readjusted after August 4, 1976, to incorporate MLA diligence; (3) leases modified after August 4, 1976, and prior to the first, post-August 4, 1976, readjustment; and (4) leases for which the operator/lessee voluntarily accepted the 1982 regulatory diligence system pursuant to those regulations. At the end of the 10-year diligent development period, the Bureau of Land Management will determine whether commercial quantities has been produced during the period. If commercial quantities has been produced, the lease will be subject to the regulations implementing the statutory continued operation requirement. If not, the lease is terminated pursuant to authority of law. The proposed rule provides that lease termination is not stayed pending an appeal because the termination occurs pursuant to authority of law. The operator/lessee will be notified of the termination by decision of the authorized officer.

In order to ensure fair and equitable treatment for holders of Federal coal leases, regardless of whether they were issued before or after enactment of FCLAA, the Bureau of Land Management would allow lessees the option of being subject to continued operation prior to the end of the 10-year diligent development period. This is especially applicable to lessees that have held pre-FCLAA leases for 10 years or more that must stop producing for whatever reason and that do not wish to be disqualified from being issued other MLA leases. The only way such a lessee can be qualified for MLA lease issuance is to be relieved of the producing-in-commercial-quantities requirement. Under section 2(a)(2)(A) of MLA, this relief is only available through payment of advance royalty in lieu of continued operation. The optional election to be subject to continued operation before the end of the 10-year diligent development period will ensure that nonspeculative lessees with leases that have produced are able to remain competitive in the MLA lease management programs.

Regardless of the method by which a lease becomes subject to continued operation, the first continued operation year would begin on the first day of the calendar month after the 10-year diligent development period or during which the continued operation election is made, whichever occurs earlier. The lessee could have its lease be subject to continued operation at the end of the 10-year diligent development period, if the lessee has produced diligent development commercial quantities (0.3 percent of the recoverable coal reserves) prior to the end of the 10-year diligent development period, or at the election of the lessee if the lessee has produced diligent development commercial quantities.

The Congress, in enacting FCLAA, added the producing-in-commercial-quantities requirement and 10-year period to section 2(a)(2)(A) of MLA. FCLAA also added the producing-in-commercial-quantities-at-the-end-of-10-years and lease-continuation-based-on-annual-production-of-commercial-quantities requirements to section 7 of MLA. Logically, and to provide consistency in the Federal Coal Management Program, these provisions of the law that encourage production and discourage speculation in the Federal Coal Management Program should be similarly addressed in the regulations implementing the Congressional intent.

The Bureau of Land Management has concluded that it is appropriate to allow the full 10 years to measure producing in commercial quantities for section 2(a)(2)(A) of MLA. This has been explained in the preambles to the "Guidelines for Implementation of section 2(a)(2)(A) of the Act of February 25, 1920, as amended (30 U.S.C. 201(a)(2)(A)" (50 FR 35125, August 29, 1985), the proposed amendments to existing regulations to implement the provisions of section 2(a)(2)(A) of MLA (51 FR 37202, October 20, 1986), and the final amendments to existing regulations to implement the provisions of section 2(a)(2)(A) of MLA (51 FR 43910, December 5, 1986, as modified at 52 FR 415, January 6, 1987). The discussion in the **SUPPLEMENTARY INFORMATION** section of the final rule is incorporated in its entirety, to the extent not modified herein. The analysis resulting in the 10-year period for measuring "producing in commercial quantities" for section 2(a)(2)(A) of MLA is hereby adopted as the basis for the proposed change in diligent development period.

In addition, the Department of the Interior is proposing to address an issue related to advance royalty provisions which has not been previously addressed by regulation. Section 7(a) of MLA clearly differentiates between the use of "term" as it applies to lease issuance and "period" as it applies to subsequent lease readjustments. Section 7(a) states, in relevant part: "A coal lease shall be for a *term* of twenty years . . .[t]he lease will be subject to readjustment at the end of its primary *term* of twenty years and at the end of each ten-year *period* thereafter if the lease is extended." (Emphasis added.) Section 7(b), however, states in relevant part: "The aggregate number of years during the *period* of any lease for which advance royalties may be accepted in lieu of the condition of continued operation shall not exceed ten. . . . No advance royalty paid during the initial twenty-year *term* of a lease shall be used to reduce a production royalty after the twentieth year of the lease." (Emphasis added.)

The language of section 7(b) of MLA clearly implies that, during the initial 20-year primary term of the lease, advance royalty may be paid because of the requirement that advance royalty cannot be recouped against production royalty after the initial 20-year primary term has expired. However, if the lease is extended by any readjustment, advance royalty may also be paid a total of 10 times during any 10-year readjustment period.

Because Congress did not specifically address how the advance royalty provisions in section 7(b) of MLA were to be applied between "term" and "period", the Department interprets the interplay between these provisions of MLA to equate "term" and "period" for advance royalty purposes. The Department interprets the use of the term "period", restricting the number of times that advance royalty may be paid, to also apply to the initial 20-year "term." Otherwise, there would be no restriction on the number of times advance royalty could be paid during the initial 20-year term. This interpretation is consistent with the other provisions of MLA that encourage production.

The statutory language clearly limits the number of times advance royalty may be paid in lieu of continued operation. This means that no advance royalty paid during any 10-year readjustment period may be recouped against any production royalty that is owed in a subsequent 10-year readjustment period. The proposed rule incorporates this interpretation.

Finally, advance royalty is a payment that must be paid in advance of the production for which royalty would otherwise be paid. Currently, advance royalty is allowed to be paid within 30 days after the *end* of the continued operation year for which advance royalty is due. It is proposed to change the timing of the advance royalty payments as follows. If an operator/lessee loses its existing contracts during a continued operation year or if the mining sequence shows that during a specific continued operation year a specific Federal coal lease (that is subject to continued operation) would not be producing, advance royalty would be due within 30 days after the *beginning* of the continued operation year. However, if the operator/lessee fully intends to mine the Federal coal lease during the continued operation year and either does not produce or produces less than commercial quantities for continued operation, advance royalty would still be allowed to be paid within 30 days of the *end* of the continued operation year. In this second instance, the payment of advance royalty would be subject to a late-payment (interest) charge for the 12-month continued operation year in question.

Subpart 3485—Logical Mining Unit Diligence Requirements

This subpart would be separated from LMU application processing (see subpart 3477) and would address operations issues that were discussed in the "Guidelines for Implementation of Section 2(d) of the Act of February 25, 1920, as amended (30 U.S.C. 202a)" (50 FR 35145, August 29, 1985). The regulatory diligence system applied to LMU's, as addressed in the LMU guidelines, would be set out at this section 3485. The incorporated guidelines represent long-standing Department policy regarding the application of diligence to LMU's pursuant to 30 U.S.C. 202a (2) and (3) (Section 2(d) (2) and (3) of MLA).

Subpart 3486—Inspection, Production Verification, Orders, and Enforcement

The title would be amended to add production verification and remove appeals. Portions of the production verification section would be extracted from existing subpart 3485 and appeals would be consolidated at § 3400.12). This proposed subpart 3486 implements long-standing Department policy, as set out in the Inspection and Enforcement/Production Verification Guidelines (Bureau of Land Management Instruction Memorandum No. 87–742, September 30, 1987).

Section 3486.1 Inspections, general

This section would be reorganized for clarity. The term "established requirements" would be applied as defined at § 3400.0–5 to eliminate unnecessary and repetitive wording. Paragraph (a) would set out the quarterly inspection frequency for leases and licenses where operations, development, production, beneficiation, or handling of coal are being conducted, and annual inspection frequency for inactive leases, licenses, and LMU's. Paragraph (c), regarding abandonment, would be moved from existing § 3484.2 for simplification. Paragraph (d), regarding trespass, was incorporated from existing § 3481.0–6(d)(10) to consolidate inspection functions in one section of the regulations. The trespass section would be reworded to make it

clear that the Bureau of Land Management is the administrative authority for all coal trespass actions.

Section 3486.2 Production Verification

This is a new section that would be added to emphasize and clarify the Bureau of Land Management's role of substantiating and independently calculating production and the operator/lessee's responsibility in production verification. This section came from existing Subpart 3485, without the provisions previously transferred to the Minerals Management Service (54 FR 1492, 1532, January 13, 1989). There would be no new burdens on the operator/ lessee because of this new section. Paragraph (d) has been revised to allow the Bureau of Land Management to obtain any data already generated by the operator/lessee for use in production verification. Such data include, but are not limited to, aerial photographs or electronic media such as computer tapes. There is no new requirement that an operator/lessee must generate such data as part of the operation. Paragraph (e) would be included to show that production maps are to be submitted more frequently than, but need not contain the detail of, information required at proposed section 3483.4.

Section 3486.3 Orders

This section was previously section 3486.2 and was entitled "Notices and Orders." Notices would be deleted because they are covered in proposed § 3486.4. This section would be reorganized to clarify the difference between a General Mining Order issued by the Director and other orders that can be issued by an authorized officer at the State or District Office level of the Bureau of Land Management. If and when issued, all General Mining Orders will be listed in a table in this section. Part of this section would be redesignated proposed § 3481.1(g).

Section 3486.4 Enforcement

This section would be redesignated from existing §§ 3485.1(e) and 3486.3. The use of the term "established requirements" would simplify this section by eliminating excess and duplicative wording. Also, parts of existing § 3465.2 concerning enforcement of the Surface Mining Control and Reclamation Act of 1977 would be moved to proposed § 3486.4 in order to consolidate enforcement notices, procedures and actions in one section of the regulations.

Section 3486.4(d)

This section would incorporate the long-standing Department policy of ensuring payment of royalty for all coal that should otherwise have been mined and sold in accordance with standard industry operating practices. The operator/lessee would continue to be liable for royalty payments on coal that is avoidably lost or wasted as a result of the operator/lessee's mining operation.

The principal authors of this proposed rule are Harold W. Moritz and Allen B. Agnew of the Division of Solid Mineral Operations, assisted by other staff of the Division of Solid Mineral Operations and several Field Offices, and staff of the Division of Legislation and Regulatory Management, all of the Bureau of Land Management, and by staff of the Office of the Solicitor.

An environmental assessment has been prepared and a finding of no significant impact has been determined for these proposed amendments to 43 CFR group 3400 for the Federal Coal Management Program. The environmental assessment is available, upon written request, from the Bureau of Land Management (WO–660), Division of Solid Mineral Operations, 1849 C St. NW., rm. 3411, Washington DC 20240–1849. The environmental assessment incorporates by reference the 1985 supplemental environmental impact statement for the Federal Coal Management Program and no new significant information has arisen since publication of the supplemental environmental impact statement that would require a new environmental impact statement. It is hereby determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). In addition, as required by Executive Order 12630, the Department of the Interior has determined that the rule will not cause a taking of private property.

The information collection requirements contained in this regulation have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501, *et seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget.

Public reporting burden for this collection of information is estimated to average 22 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Gerri Jenkins, Bureau Clearance Officer, Bureau of Land Management (770), room 208 Premier Building, Department of the Interior, Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project, 1004–0073, Washington, DC 20503.

List of Subjects

43 CFR Part 3400

Administrative practice and procedure, Coal, Government contracts, Intergovernmental relations, Mines, Public lands-mineral resources

43 CFR Part 3410

Administrative practice and procedure, Coal, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds

43 CFR Part 3420

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43 CFR Part 3480

Government contracts, Intergovernmental relations, Mineral royalties, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements.

Under the authorities cited below, parts 3400, 3410, 3420, 3440, 3450, 3460, 3470 and 3480 of group 3400 of subchapter C, chapter II, title 43 of the Code of Federal Regulations are proposed to be amended as follows.

Group 3400—Coal Management

Note: The information collection requirements contained in parts 3400, 3410, 3420, 3430, 3440, 3450, 3460, 3470, and 3480 of Group 3400 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004–0073. The information is being collected to allow the authorized officer to determine whether a lease applicant is qualified to hold such a lease and to administer the statutes applicable to coal mining production, resource recovery and protection, operations, and exploration on leases and licenses. This information is critical for these purposes. The obligation to respond is required to obtain a benefit and is, in some instances, mandatory for lessees and licensees.

PART 3400—COAL MANAGEMENT: GENERAL

1. Part 3400 is amended by adding §§ 3400.0–1, 3400.0–4, 3400.0–6, 3400.7, 3400.8, and 3400.9 and revising §§ 3400.0–3, 3400.0–5, 3400.3–4, and 3400.4 to read as follows:

1.A. The authority citation for part 3400 is revised to read as follows:

Authority: 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351–359; 30 U.S.C. 521–531; 30 U.S.C. 1201 *et seq.*; 43 U.S.C. 1701 *et seq.*; 25 U.S.C. 396–399; 25 U.S.C. 2101 *et seq.* 42 U.S.C. 4321 *et seq.*; 16 U.S.C. 470 *et seq.*; 16 U.S.C. 1531 *et seq.*; 43 U.S.C. 1457; 40 U.S.C. 471 *et seq.*; 5 U.S.C. 552; and 30 U.S.C. 811 and 877.

Subpart 3400—Introduction: General

§ 3400.0–1 Purpose.

The purpose of the regulations of this group is to: ensure orderly and efficient exploration, leasing, development, mining, beneficiation, and handling operations for Federal coal; ensure production practices that prevent waste or loss of coal or other resources; avoid unnecessary damage to coal-bearing or mineral-bearing formations; ensure maximum economic recovery of Federal coal; ensure that operations meet requirements for MLA diligence; ensure that exploration and mining plans are submitted and approved in compliance with MLA; ensure effective and reasonable regulation of surface and underground coal mining operations; require an accurate record and accounting of all coal produced; ensure environmentally sound exploration and mining operations; and eliminate duplication of efforts by the Minerals Management Service (MMS), the Office of Surface Mining Reclamation and Enforcement, and the States in the Federal Coal Management Program.

§ 3400.0–3 Authority.

(a) The regulations in group 3400 are issued under the authority of and to implement provisions of:

(1) The Mineral Leasing Act, as amended (MLA) (30 U.S.C. 181 *et seq.*).

(2) The Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351–359).

(3) The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*).

(4) The Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*) .

(5) The Multiple Mineral Development Act of 1954 (30 U.S.C. 521–531).

(6) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

(7) The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

(8) The National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 *et seq.*).

(9) The Act of March 3, 1909, as amended (25 U.S.C. 396).

(10) The Act of May 11, 1938, as amended (25 U.S.C. 396a–396g).

(11) The Act of February 28, 1891, as amended (25 U.S.C. 397).

(12) The Act of May 29, 1924 (25 U.S.C. 398).

(13) The Act of March 3, 1927 (25 U.S.C. 398a–398e).

(14) The Act of June 30, 1919, as amended (25 U.S.C. 399).

(15) R.S. 441, as amended (43 U.S.C. 1457).

(16) The Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 *et seq.*)

(17) The Freedom of Information Act (5 U.S.C. 552).

(18) The Indian Mineral Development Act of 1982 (25 U.S.C. 2101 *et seq.*).

(19) The Federal Coal Mine Health and Safety Act of 1977 (30 U.S.C. 811 and 877).

(b) Specific citations of authority in subsequent subparts of this group 3400 are to authorities from which the subpart is chiefly derived or which the subpart chiefly implements.

§ 3400.0–4 Scope.

The regulations of this Group govern all operations for the exploration, leasing, development, and production of Federal coal under Federal coal leases and licenses, regardless of surface ownership, pursuant to MLA. Included are provisions relating to exploration licenses, licenses for incidental exploration, competitive and noncompetitive leasing, licenses to mine, management of existing leases, the environment, coal management provisions and limitations, and coal exploration and mining operations including resource recovery and protection, royalties, MLA diligence, maximum economic recovery (MER), inspection and enforcement/production verification, and logical mining units (LMU's). See also § 3400.3–4.

§ 3400.0–5 Definitions.

Advance royalty means a royalty paid in lieu of production under a lease that is subject to MLA diligence for continued operation. Payments made under the minimum production clause, in lieu of actual production from a Federal lease issued prior to August 4, 1976, and not readjusted or modified after August 4, 1976, are not advance royalty.

Alluvial valley floor is defined at 30 CFR 710.5.

Arm's-length transaction, for purposes of implementing section 2(a)(2)(A) of MLA, means the transfer of an interest in a lease to an entity that is not controlled by or under common control with the transferor.

Authorized officer means any employee of the Bureau of Land Management delegated the authority to perform the duties described in group 3400 of this title.

Beneficial use means the operator/lessee's exercise of the rights and privileges granted in a lease, license, or LMU including, but not limited to: any activity preparatory to further the exploration or mining of a license or lease; exploration, including road and drill-pad, trench, or exploration-pit construction; development, including surface or processing-facility construction; mining, including mineral haulage, road and power-line construction, fuel transfer and electric transmission; beneficiation and other processing of material mined; and coal production and disposal by sale or otherwise. "Beneficial use" excludes actions required or necessary to maintain a mine in a suspended condition to avoid damage to other resources, to conserve the licensed or leased resource, or to ensure safety.

Beneficiation means the physical or chemical treatment of coal that is specifically intended to increase the quality and therefore the value of the coal, including, but not limited to, crushing, sizing, drying, mixing, or other processing, and removal of noncoal waste such as bone or other impurities.

Bond means the collateral or equivalent security given the Bureau of Land Management to ensure payment of all indebtedness under a lease, exploration license, license for incidental exploration, or license to mine, and to ensure that all aspects of the operation, other than reclamation operations pursuant to a SMCRA permit, are conducted in conformity with the approved exploration or mining plan.

Bonus means that value in excess of the rentals and royalties that is paid to the United States as part of the consideration for receiving a lease.

Bracket, for purposes of implementing section 2(a)(2)(A) of MLA, means a 10-year period that begins on the date that coal is first produced on or after August 4, 1976, from a lease that has not been made subject to MLA diligence as of the date of first production.

Bypass coal means an isolated, unleased coal deposit that cannot be mined in the foreseeable future as part of any mining operation other than that of the applicant either for an emergency lease under the provisions of § 3425.1–4 of this title or for a lease modification under the provisions of subpart 3432 of this title. For the purpose of royalty reduction, "bypass coal" means the permanent physical loss of coal, or that the coal would not be economically recoverable by the applicant or subsequent parties and, therefore, the coal would, in the Bureau of Land Management's judgment, not be recovered.

Casual use means activities that do not ordinarily lead to any appreciable disturbance of or damage to lands, resources or improvements; for example, activities that do not involve use of heavy equipment or explosives and activities that do not involve vehicle movement except over already established roads and trails are casual use.

Cement means an appropriate American Petroleum Institute (API) oil-well cement, mixed in accordance with API standards.

Certificate of bidding rights means a right granted by the Secretary to apply the fair market value of a relinquished coal or solid mineral lease or right to a preference-right coal or solid mineral lease as a credit against the bonus bid or bids on a competitive lease or leases acquired at a lease sale or sales, or as a credit against the payment required for a coal lease modification. Bidding credits may not be used to offset any other indebtedness under a lease, except where specifically authorized by law.

Coal deposits means all federally owned coal deposits, except those held in trust for Indians.

Coal reserve base means the estimated tons of Federal coal in place contained in beds:

(1) To a depth of 500 feet below the lowest surface elevation on the lease, which are: metallurgical or metallurgical-blend coal 12 inches or more thick; anthracite, semianthracite, bituminous, and subbituminous coal 28 inches or more thick; and lignite 60 inches or more thick;

(2) Occurring from 500 to 3,000 feet below the lowest surface elevation on the lease, which are: metallurgical or metallurgical-blend coal 24 inches or more thick; anthracite, semianthracite, bituminous, and subbituminous coal 48 inches or more thick; and lignite 84 inches or more thick; and

(3) At a depth greater than 500 feet, where the operator/lessee actually intends to mine.

Commercial quantities means 0.3 percent of the recoverable coal reserves of the lease or LMU.

Contiguous means having at least one point in common, including cornering tracts. Intervening physical separations such as burn or outcrop lines and intervening legal separations such as rights-of-way do not destroy contiguity as long as legal subdivisions have at least one point in common. Contiguity for LMU's cannot be created by rights-of-away.

Continued operation means the production of commercial quantities during each continued operation year.

Continued operation year means the 12-month period beginning on the first day of the calendar month following the date that diligent development is achieved, or the first day of the calendar month following the date that the operator/lessee elects to be subject to continued operation provided the lease has achieved diligent development, and each 12-month period thereafter.

Controlled by or under common control with, for the purposes of section 2(a)(2)(A) of MLA and based on the instruments of ownership of the voting securities of an entity, means:

(1) Ownership in excess of 50 percent constitutes control;

(2) Ownership of 20 through 50 percent creates a presumption of control; and

(3) Ownership of less than 20 percent creates a presumption of noncontrol.

Department means the United States Department of the Interior.

Designated operator means the holder of a working interest, or the party designated by the record-title or working-interest holder, to conduct operations on the lease or a portion thereof.

Determinate term lease means a lease issued or readjusted after August 4, 1976, that is subject to MLA diligence.

Development means activities conducted by an operator/lessee on a lease, after approval of an MLA mining plan and issuance of a SMCRA permit, to prepare a mine for commercial production.

Diligent development means the production of commercial quantities during the diligent development period.

Diligent development period means a 10-year period which:

(1) For a lease shall begin on the date the lease becomes subject to MLA diligence.

(2) For an LMU shall begin on either:

(i) The effective date of LMU approval, if the LMU contains at least one Federal lease that is not subject to MLA diligence prior to LMU approval; or

(ii) The effective date of the lease most recently made subject to MLA diligence prior to LMU approval if all Federal coal leases contained in the LMU are subject to MLA diligence.

Director means the Director or any employee of the Bureau of Land Management delegated the authority to perform the duties described in the established requirements in which the term "Director" is used.

Entity means any person, association, or corporation, or any subsidiary, affiliate, or person controlled by or under common control with such person, association or corporation.

Established requirements means all applicable laws, regulations, notices, and orders; the terms and conditions of the lease, license, or LMU, including any special stipulations; and requirements of any approved exploration or mining plan.

Exploration means drilling, excavating, and geological, geophysical or geochemical surveying operations that obtain any data on the physical and chemical characteristics of Federal coal and its environment including the strata below the Federal coal, strata above the Federal coal, overburden, and the hydrologic conditions associated with the Federal coal.

Exploration license means a license that allows the licensee to explore for coal on unleased Federal lands.

Exploration plan means a detailed plan to conduct exploration on leased or unleased Federal lands which shows, at a minimum, the location and type of exploration to be conducted, environmental impact mitigation procedures, existing and proposed roads, and reclamation and abandonment procedures to be followed upon completion of exploration. When an exploration plan is for leased Federal lands, it is an operation and reclamation plan required by section 7(c) of MLA.

Fair market value means the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the coal deposit would be sold or leased by a knowledgeable owner willing, but not obligated, to sell or lease to a knowledgeable purchaser who desires, but is not obligated, to buy or lease.

Federal lands means lands owned by the United States, including the surface estate, mineral estate or coal estate, but excluding lands held by the United States in trust for Indians, Aleuts, or Eskimos, without reference to how the lands were acquired or what Federal Agency administers the lands.

General mining order means any numbered formal order that is published in the **Federal Register** and that applies to coal exploration, mining, and related operations nationwide.

Governmental entity means a Federal or State agency or a political subdivision of a State, including a county or municipality or any corporation acting primarily as an agency or instrumentality of a State, that produces electrical energy for sale to the public.

Gross proceeds is defined at 30 CFR 206.251.

Holds and has held, for the purposes of section 2(a)(2)(A) of MLA, means the cumulative amount of time, including nonconsecutive holding periods, that an entity holds any working interest in a lease on or after August 4, 1976. Any holder of record title, even if less than 50 percent, "holds" a working interest for purposes of section 2(a)(2)(A) of MLA.

Indebtedness means the owing of a sum of money pursuant to a lease, license, or logical mining unit and includes those obligations already due, as well as those yet to become due.

Indeterminate term lease means a lease issued prior to August 4, 1976, that has not yet been readjusted after August 4, 1976.

Instrument of transfer means a document which gives formal expression to an agreement for the purpose of creating, securing, modifying, or terminating a right. "Instrument of transfer" includes, but is not limited to, assignment documents, sublease agreements, designated-operator agreements, overriding-royalty agreements, production-payment agreements, and attendant, backup documents such as a lessee-qualifications statement or those describing the financial considerations which are set out at § 3474.2–1(a)(2)(v) of this title.

Interest in a lease, application, or bid means: any record-title interest, overriding royalty interest, working interest, operating rights, or any agreement covering any such interest or right; any claim or any prospective or future claim, including options, to those interests or rights; and any participation or any defined or undefined share in any increments, issues, or profits that may be derived from or that may accrue in any manner from the lease based on or pursuant to any agreement or understanding existing when the application was filed or entered into while the lease application or bid is pending. Stock ownership or stock control does not constitute an interest in a lease within the meaning of this definition. A security agreement is an "interest" only if transfer of record title to the lease is a remedy for default. Attribution of acreage to stock-ownership interests in leases is described in § 3462.1–3(b) of this title.

Lease means a Federal lease, issued under the coal leasing provisions of the mineral leasing laws, which grants the exclusive right to explore for, mine, extract, remove, or otherwise process and dispose of the coal deposit.

Lease account in good standing means that there are no unbonded, outstanding demand requests and no unbonded accounts-receivable balances.

License means either an exploration license, a license for incidental exploration, or a license to mine.

License for incidental exploration means a license that allows the licensee to drill wells on unleased Federal lands when the operator/lessee is so directed by the regulatory authority.

License to mine means a license issued to mine coal for domestic use.

Licensee means the holder of an exploration license, license for incidental exploration, or license to mine.

Logical mining unit (LMU) means an area of land in which the recoverable coal reserves can be developed in an efficient, economical, and orderly manner as a unit, with due regard to conservation of recoverable coal reserves and other resources.

LMU recoverable coal reserves means the sum of Federal and non-Federal recoverable coal reserves in the LMU.

Maximum economic recovery (MER) means the requirement that all recoverable coal reserves in a leased Federal coal deposit be mined.

Methods of operation means the methods and manner, described in an exploration plan, resource recovery and protection plan, or mining plan, by which exploration, development, or mining activities are to be performed by the operator/lessee.

Minable reserve base means that portion of the coal reserve base that is minable using standard industry operating practices and includes all coal that will be left, such as in pillars, fenders or property barriers. Other coal of which mining is not permitted (including, but not limited to, coal contained in areas classified as unsuitable for surface coal mining operations) shall be excluded from the minable reserve base.

Mine means an underground or surface excavation or series of excavations and the underground or surface support facilities that contribute directly or indirectly to mining, production, beneficiation, and handling of coal.

Mineral leasing laws means the Mineral Leasing Act, as amended (MLA) (30 U.S.C. 181, *et seq.*), and the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351–359).

Mining plan means an operation and reclamation plan that must be approved, pursuant to section 7(c) of MLA, prior to commencement of operations that might cause a significant disturbance of the environment. The "mining plan" must show that the proposed operation meets the requirements of MLA for development, production, resource recovery and protection, diligent development, continued operation, MER, and the regulations of part 3480 for the life-of-the-mine, containing all requirements set out at § 3483.3, and that must be approved prior to commencement of operations.

Mining unit means an area containing recoverable coal reserves that will feasibly support a commercial mining operation. The coal may be either Federal or both Federal and non-Federal.

MLA diligence means the requirements for diligent development, continued operation and the 3-year resource recovery and protection plan (R2P2) submission imposed by section 7 of MLA, as amended by section 6 of the Federal Coal Leasing Amendments Act of 1976 (30 U.S.C. 207), on leases:

(1) Which are issued with an effective date after August 4, 1976;

(2) Which are readjusted with an effective date after August 4, 1976;

(3) Which are modified to include acreage or coal reserves with an effective date after August 4, 1976; or

(4) For which the lessee voluntarily accepts the conditions of MLA diligence.

Operations means those activities conducted on a lease or license in accordance with either an approved exploration plan or mining plan.

Operator/lessee means lessee, working-interest holder, licensee, and/or the person conducting operations on a lease, license, or LMU under a written contract or written agreement with the lessee or licensee.

Overriding royalty means an interest that is a given percentage of the gross proceeds payable to some entity other than the Federal Government; the duration of such interest is limited by the duration of the "instrument of transfer" under which the overriding royalty is created.

Payment-out-of-production means an overriding-royalty, production-payment, or similar interest.

Permit is defined at 30 CFR § 701.5.

Permit application package is defined at 30 CFR § 740.5.

Permit area is defined at 30 CFR § 701.5.

Potentially disqualifying affiliation means any entity that:

(1) Participates in, or may participate in, leasing of coal, onshore oil and gas (including tar sands), oil shale, and leasable minerals as that term is defined at § 3500.0–5 of this title; and

(2) Is controlled by or under common control with an applicant for a lease, whether by issuance or transfer, including those entities that control the applicant and those entities for which the presumption of control of the applicant exists.

Producing means actually severing coal, or operating an ongoing mining operation, in accordance with standard industry operating practices. A lease is deemed to be producing, even though:

(1) Severance is temporarily suspended for reasons beyond the reasonable control of the operator/lessee including, but not limited to, factors such as:

(i) Dragline or other equipment moving, breakdown, or repair;

(ii) Overburden removal;

(iii) Sale of coal from stockpiles;

(iv) Vacations and holidays;

(v) Severe, inclement weather;

(vi) Orders of governmental authorities; and

(vii) Coal buyer's operations of its power plants that require the coal buyer to stop taking coal shipments for a limited duration of time;

(2) Severed coal is being processed, loaded, or transported from the point of severance to the point of sale; or

(3) Reclamation and/or reclamation monitoring of a mined-out lease is being conducted.

Production payment means an interest that is a set dollar amount, based on production, that is payable to some entity other than the Federal Government; the duration of such interest is limited by the duration of the "instrument of transfer" under which the production payment is created.

Production verification (PV) means the procedures used by the authorized officer to establish the production, through independent means, to provide a cross-check with data reported by the operator/lessee to the Minerals Management Service for royalty purposes.

Public bodies means: Federal and State agencies; political subdivisions of a State, including counties and municipalities; rural electrical cooperatives and similar organizations; and nonprofit corporations controlled by such entities.

Qualified surface owner means the natural person or persons (or corporation, the majority of which is held by a person or persons otherwise meeting the requirements of this definition) who:

(1) Hold legal or equitable title to the surface of split-estate lands;

(2) Have their principal place of residence on the land, or personally conduct farming or ranching operations upon a farm or ranch unit to be affected by surface mining operations; or receive directly a significant portion of their income, if any, from such farming and ranching operations; and

(3) Have met the conditions of paragraphs (1) and (2) of this definition for a period of at least 3 years, except for persons who gave written consent less than 3 years after they met the requirements of both paragraphs (1) and (2) of this definition. In computing the 3-year period, the authorized officer will include periods during which title was owned by a relative of such person by blood or marriage if, during such periods, the relative would have met the requirements of this definition.

Readjustment means periodic review and/or change of the lease terms, conditions, and stipulations of any valid lease to bring the lease into compliance with laws enacted and regulations promulgated since the lease was issued or last readjusted and which have not yet been incorporated in the lease terms and conditions.

Recoverable coal reserves means the minable reserve base, excluding all coal that will be left, such as coal in pillars, fenders, and property barriers.

Regulatory authority is defined at 30 CFR 740.5.

Relinquishment means the voluntary surrender of a lease or license or a portion of a lease or license.

Resource recovery and protection includes practices for: efficient mining of the recoverable coal reserves subject to these regulations; avoidance of waste or loss of coal or other resources; prevention of damage to or degradation of coal-bearing or mineral-bearing formations; insurance of MER of the Federal coal; and insurance that other resources are protected during exploration, development and mining, and upon abandonment.

Resource recovery and protection plan (R2P2) means an operation and reclamation plan that is submitted solely to meet the 3-year operation and reclamation plan submission requirement of section 7 of MLA (30 U.S.C. 207(c)).

Secretary means the Secretary of the Interior or any employee of the Department of the Interior delegated the authority to perform the duties described in the established requirements in which the term "Secretary" is used.

SMCRA means the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

SMCRA permit is defined as a "permit" at 30 CFR 701.5.

Sole party in interest means a party who is or will be vested with all legal and equitable rights under a lease or bid, or an application for a lease.

Split estate means land in which the surface estate and the mineral estate or coal estate are not held by the same persons or governmental bodies.

State Director means an employee of the Bureau of Land Management who has been designated as the chief administrative officer of one of the Bureau of Land Management's 12 administrative areas designated as "State Offices" in subpart 1821 of this title.

Sublease means a transaction whereby the operator/lessee grants interests in the lease that are less than the operator/lessee's own and reserves to the operator/lessee such things as the responsibility for rental, royalty, and advance royalty payments and a reversionary interest in the lease.

Subsidence means the lowering of the strata, including the surface, due to underground excavations.

Substantial legal and financial commitments is defined at 30 CFR 762.5.

Surface coal mining operations means activities conducted on the surface of lands in connection with a surface coal mine or surface operations and surface impacts incident to an underground mine, as defined in section 701(28) of SMCRA (30 U.S.C. 1291(28)).

Surface management agency means the Federal Agency with jurisdiction over the surface of federally owned lands containing coal deposits and, in the case of private surface over Federal coal, the Bureau of Land Management, except in areas designated as National Grasslands, where it means the U.S. Forest Service.

Surface Mining Officer means the Director of the Office of Surface Mining Reclamation and Enforcement (OSMRE) or individuals delegated the authority to take action under the authority of SMCRA.

Terminate means cease to exist for failure to be producing in commercial quantities at the end of 10 years from the date that a lease becomes subject to MLA diligence.

Working interest means both record-title interest and arrangements whereby an entity has the ability to affect when, and/or under what circumstances, the rights granted by a lease to develop coal will be exercised.

Written consent means the document or documents that a qualified surface owner has signed that permit a coal operator to enter and commence surface coal mining operations, including:

(1) A description of financial or other consideration given or promised in return for the permission, including in-kind consideration;

(2) A description of any consideration given by a coal operator in terms of type or method of operation or reclamation for the area;

(3) Any supplemental or related contracts between the surface owner and any other person who is a party to the permission; and

(4) A full and accurate description of the area covered by the permission.

§ 3400.0–6 Responsibilities.

(a) *Bureau of Land Management (BLM).* Subject to the administrative authority of the Secretary, the regulations of this Group are implemented by the Bureau of Land Management. BLM has the general responsibility to administer MLA with respect to coal management including leasing, exploration, establishing bonds, development, mining, production, beneficiation, handling, resource recovery and protection, MLA diligence, inspection and enforcement, production verification and abandonment operations subject to the regulations of this Group. The Federal Coal Management Program implemented by the Bureau of Land Management includes both "leasing" and "operations". Bureau of Land Management "leasing" includes all actions taken prior to the issuance of a Federal coal lease or license. Bureau of Land Management "operations" include all actions taken after the issuance of a Federal coal lease or license and after the issuance of an Indian coal lease, license, or minerals agreement.

(b) *Responsibilities of Other Federal Agencies.* (1) *Minerals Management Service.* The Minerals Management Service is responsible for: the collection of certain rents, royalties, and other payments; the determination of the value of the Federal coal mined; the receipt of sales and production reports; determining royalty liability; maintaining accounting records; certifying that the lease account is in good standing; any audits of royalty payments and indebtedness; and any and all other functions relating to royalty management on Federal and Indian lands in accordance with 30 CFR chapter II, subchapter A.

(2) *Office of Surface Mining Reclamation and Enforcement.* The Office of Surface Mining Reclamation and Enforcement is responsible for administration of SMCRA (30 U.S.C. 1201, *et seq.*), including the Federal lands program, and conducting the section 522(a)(2) of SMCRA (30 U.S.C. 1272(a)(2)) portion of the Federal lands review.

(3) *Mine Safety and Health Administration, Department of Labor.* The Mine Safety and Health Administration is responsible for administration of the Federal Coal Mine Health and Safety Act of 1977, as amended (91 Stat. 1322), and the coal mine health and safety regulations contained in chapter XXII of title 30 of the Code of Federal Regulations.

(4) *U.S. Forest Service, Department of Agriculture.* The U.S. Forest Service is responsible for administration of the use of the surface of National Forest System lands in accordance with 36 CFR subpart B.

(5) *Surface Management Agency.* The Federal surface management agency, if other than the Bureau of Land Management, is responsible for:

(i) Preparing land-use plans;

(ii) Consenting to the issuance of exploration licenses, licenses for incidental exploration, and leases;

(iii) Consenting to the terms of the mining plan;

(iv) Requiring such conditions as may be appropriate to regulate surface coal mining and reclamation operations under other provisions of law applicable to such lands under its jurisdiction;

(v) Protecting nonmineral resources; and

(vi) Determining post-mining land uses.

(6) *Bureau of Indian Affairs.* On tribal and allotted Indian lands, the Bureau of Indian Affairs is responsible for: determining whether leasing for mineral development is appropriate; conducting resource/economic evaluation; establishing bonds; conducting lease sales; collecting and accounting for bonuses, first-year rentals, and rentals on nonproducing leases; serving as agency-of-record for all lease documents and Indian ownership data; approving assignments; canceling leases for violation of terms; investing lease revenues; disbursing lease revenues and proceeds of investment to tribal and allottee owners; advising Indian allottees of the basis for lease-payment distribution; and for protecting and conserving nonmineral resources during operations for the discovery, development, surface mining and onsite processing of minerals under permits or leases issued pursuant to statutes pertaining to Indian lands.

§ 3400.3–4 Trust protection lands.

The regulations in this group 3400 do not apply to the leasing of coal deposits held in trust by the United States for Indians. Operating regulations governing such coal deposits are found in part 3480 of this title and 25 CFR chapter I. With the exceptions of MLA diligence and MER, part 3480 of this title, including but not limited to exploration plans and performance standards, mining plans and performance standards, and inspection and enforcement/production verification, governs operations for all coal on tribal and allotted Indian lands leased under 25 CFR parts 211 and 212. Further, when the regulations in part 3480 of this title relate to matters included in 25 CFR part 216, the regulations in part 3480 of this title shall be considered as supplemental and the regulations in 25 CFR part 216 shall govern to the extent of any inconsistencies.

§ 3400.4 Federal/State government cooperation.

(a) In order to implement the requirements of law for Federal-State cooperation in the management of Federal lands, a Department-State regional coal team will be established for each coal production region defined pursuant to § 3400.5 of this title. The team will consist of either a Bureau of Land Management State Director or

other Bureau of Land Management representative for each State in the region; the Governor, or his designated representative, for each State in the region; and a representative appointed by and responsible to the Director of the Bureau of Land Management. The Director's representative will be the chairman of the team.

§ 3400.7 Public availability of information.

(a) All data and information submitted under this group 3400 are subject to part 2 of this title, which sets forth the regulations of the Department relating to the public disclosure of data and information contained in Department records. The § 2.22 of this title governs, among other things, the confidentiality of data and information relating to coal exploration licenses (except licenses for incidental exploration) and fair market value, which is specifically protected under the mineral leasing laws pursuant to exemption 3 of the Freedom of Information Act (5 U.S.C. 552(b)(3)).

(b) Parties submitting data and information under group 3400 of this title that they believe to be exempt from disclosure, shall, at the time of submission to the authorized officer, or a reasonable time thereafter, clearly mark it **"CONFIDENTIAL INFORMATION"** and physically separate it from other portions of the submitted materials and mark each such page. Data and information so marked will be kept confidential to the extent allowed by the regulations in part 2 of this title. Failure to so mark data and information submitted under this group 3400 may result in public disclosure to the full extent allowed under part 2 of this title without notice to the submitter, subject to § 2.15(d)(4)(v) of this title.

(c) Data and information that are protected under § 2.22 of this title will be withheld from disclosure to the extent authorized in that section, even if not marked in accordance with paragraph (b), of this section.

(d) Certain data and information are protected from disclosure to the public under § 2.22 of this title only until the lands to which the information pertains have been leased or either until such time as the authorized officer determines that making such data and information available to the public would not damage the competitive position of the licensee (§ 2.22(c)(1) of this title) or until such time as the authorized officer determines that release of such data and information is in the public interest (§ 2.22(c)(5) of this title), whichever occurs first. Parties who do not wish either exploration license data and information, or fair market value comments, data and information, to be disclosed to the public prior to lease issuance, or who wish data and information otherwise protected under § 2.22 of this title to remain confidential after lease issuance, shall mark the data and information in accordance with paragraph (b), of this section. Data and information marked in this manner will be withheld from disclosure to the public until such time as the authorized officer determines whether the data and information are, in fact, exempt from disclosure under the procedures of 43 CFR part 2.

(e) All findings forming the basis of the Secretary's intent to approve or disapprove Minerals Agreements under the Indian Mineral Development Act of 1982 (IMDA), 25 U.S.C. 2101, *et seq.*, as well as all projections, studies, data, or other information possessed by the Department regarding the terms and conditions of Minerals Agreements made pursuant to IMDA, the financial return to the Indian parties thereto, or the extent, nature, value, or disposition of the Indian mineral resources or the production, products, or proceeds thereof, will be held by the Department as privileged proprietary information of the affected Indian or Indian tribe, as provided in IMDA.

§ 3400.8 Surface management and protection.

(a) The operator/lessee shall use only that part of the surface area in its exploration license, license for incidental exploration, lease, or license to mine for which an exploration plan has been approved (§ 3482.2 of this title), or for which an MLA mining plan has been approved (§ 3483.2–1(a) of this title) and a SMCRA permit issued (30 CFR part 740).

(b) Separate leases, permits, or rights-of-way under the appropriate provisions in this title, or pursuant to the regulations of the surface management agency, if other than the Bureau of Land Management, are required for: the installation of power generation plants or commercial or industrial facilities on the lands in the exploration license, license for incidental exploration, lease, or license to mine; for the use of mineral materials from the land in the lease or license, except as authorized by § 3610.2–3 of this title; or the use of timber from the land in the lease or license.

(c) Other land uses under other authorities may be allowed on an area covered by an exploration license, license for incidental exploration, lease, or license to mine provided there is no unreasonable conflict and that neither the exploration and/or mining operations nor the other uses are jeopardized.

§ 3400.9 Rights and duties.

§ 3400.9–1 Nondiscrimination.

An entity being issued or transferred a lease pursuant to this group 3400 shall comply fully with the equal opportunity provisions of Executive Order 11246 (September 24, 1965), as amended, and the rules, regulations and relevant orders of the Secretary of Labor (41 CFR part 60 and 43 CFR part 17).

§ 3400.9–2 False statements.

Under the provisions of 18 U.S.C. 1001, it is a crime punishable by 5 years imprisonment or a fine of up to $10,000, or both, for any person knowingly and willfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statement(s) as to any matter within the agency's jurisdiction.

§ 3400.9–3 Unlawful interests.

No member of, or delegate to, Congress, or Resident Commissioner, and no employee of the Department of the Interior, except as provided at 43 CFR Part 20, shall be entitled to acquire or hold any lease, or interest therein. (Officer, agent or employee of the Department—see 43 CFR part 20; Member of Congress—see 41 U.S.C. 22; 18 U.S.C. 431–433).

§ 3400.9–4 Appeals.

Except as provided at § 3427.2 of this title, any party affected adversely by a decision of the authorized officer made pursuant to the provisions of group 3400 of this title shall have the right of appeal pursuant to part 4 of this title.

2. Part 3410 is revised to read as follows:

PART 3410—EXPLORATION LICENSES

Subpart 3410—Exploration Licenses

Sec.

Subpart 3411—Licenses for Incidental Exploration

Authority: 30 U.S.C. 181 *et seq.*

Subpart 3410—Exploration Licenses

§ 3410.1 General.

§ 3410.1–1 Lands subject to exploration licenses.

Exploration licenses may be issued for:

(a) Lands that are subject to leasing under group 3400 of this title, except for lands included in an existing lease; and

(b) Acquired lands set apart for military or naval purposes if the applicant is a governmental entity as defined at § 3400.0–5 of this title.

§ 3410.1–2 When required.

(a) No exploration activities shall be conducted on lands subject to this subpart without an approved exploration license, except as provided in subpart 3411 of this title.

(b) An exploration license shall not be required for casual use.

(c) Exploration activities conducted without an exploration license in violation of this subpart shall constitute trespass and shall be subject to the provisions of § 9239.5–3(f) of this title.

§ 3410.2 Prelicensing procedures.

§ 3410.2–1 Application.

(a) Exploration license applications shall be submitted to the Bureau of Land Management State Office having jurisdiction over the lands covered in the application (subpart 1821 of this title). The application shall be subject to the following requirements:

(1) No specified form of application is required.

(2) The lands shall be described in accordance with § 3461.1–1 of this title.

(3) Each application shall contain three copies of an exploration plan that complies with the requirements of § 3482.1 of this title.

(4) Each application and its supporting documents shall be filed with a nonrefundable filing fee (see § 3471.2 of this title).

(5) Exploration license applications shall normally cover no more than 25,000 acres in a reasonably compact area and entirely within one State. An application covering more than 25,000 acres shall include a justification for an exception to the normal acreage limitation.

(b) Applicants for exploration licenses shall provide an opportunity for other parties to participate on a pro-rata, cost-sharing basis, in the following manner:

(1) Immediately upon filing an application for an exploration license, the applicant shall cause to be published a "Notice of Invitation," approved by the authorized officer, once each week for 2 weeks consecutively in at least one newspaper of general circulation in the area where the lands covered by the exploration license application are situated. This Notice shall contain an invitation to the public to participate in exploration operations under the exploration license and shall contain the address of the Bureau of Land Management office in which the application is available for inspection. One copy of the Notice of Invitation will be filed with the authorized officer at the time of publication by the applicant for posting; and

(2) Any person seeking to participate shall notify the authorized officer and the applicant in writing within 30 days after the date of first publication in the newspaper (see paragraph (b)(1) of this section). The authorized officer may notify the person seeking to participate that the person should either file a separate application for an exploration license or negotiate with the applicant for participation in the exploration license.

§ 3410.2–2 Environmental analysis.

Before an exploration license may be issued, the authorized officer or the surface management agency, if other than the Bureau of Land Management, will perform and document an environmental review (e.g., categorical exclusion, environmental assessment, environmental impact statement, or administrative review). The documentation will address the potential effects of the proposed exploration on the affected area and be conducted in accordance with the requirements of the National Environmental Policy Act of 1969.

§ 3410.3 Action on exploration licenses.

§ 3410.3–1 Issuance of exploration licenses.

(a) The authorized officer has the discretion to modify or reject the application or issue the exploration license. The authorized officer will include in each exploration license, as necessary, requirements and stipulations to protect the environment and associated natural resources and to ensure reclamation of the lands disturbed by exploration.

(b) An exploration license shall become effective on the date specified by the authorized officer. The exploration license will be issued for 2 years and may not be extended.

(c) An exploration plan approved in accordance with subpart 3482 of this title shall be attached to and made part of each exploration license.

(d) An issued exploration license may be modified by the authorized officer, based on changes made to the exploration plan pursuant to § 3482.3 of this title.

(e) Exploration operations may not be conducted after the exploration license has expired. The licensee may apply for a new exploration license as described in this subpart. A new exploration license may be issued simultaneously with the expiration of the existing exploration license.

§ 3410.3–2 Limitations on exploration licenses.

(a) Exploration operations under these regulations shall not unreasonably interfere with or endanger operations authorized under any other Act or regulation. The issuance of an exploration license for an area shall not preclude the issuance of a lease under applicable regulations for that area. If a lease is issued for lands included in an exploration license, the exploration license shall be canceled on the effective date of the lease for those lands common to both.

(b) No coal may be sold from operations conducted pursuant to an exploration license.

(c) No exploration license will be issued to any applicant that has outstanding violations pursuant to 30 CFR 773.15(b).

§ 3410.3–3 Operating regulations.

The licensee shall comply with the provisions of the operating regulations in subpart 3482 of this title. Authorized representatives of the Secretary and, where appropriate, the surface management agency, shall be permitted to inspect the premises and operations. The licensee shall allow the free and unrestricted ingress and egress of Government officers and other persons using the land under authority of the United States.

§ 3410.3–4 Bonds.

Bonding provisions in subpart 3473 of this title apply to this subpart.

Subpart 3411—Licenses for Incidental Exploration

§ 3411.1 General.

§ 3411.1–1 Lands subject to licenses for incidental exploration.

Licenses for incidental exploration may only be issued noncompetitively for lands that are subject to leasing under group 3400 of this title, and which are not included in an existing lease.

§ 3411.1–2 When required.

(a) A license for incidental exploration is required on any unleased lands that contain Federal coal on which the regulatory authority has directed any drilling.

(b) A license for incidental exploration is not required for casual use.

(c) The drilling of wells conducted without a license for incidental exploration in violation of this subpart shall constitute a trespass and shall be subject to the provisions of § 9239.5–3(f) of this title.

§ 3411.2 Prelicensing procedures.

§ 3411.2–1 Application.

(a) License-for-incidental-exploration applications shall be submitted to the Bureau of Land Management State Office having jurisdiction over the lands covered in the application (subpart 1821 of this title). The application shall be subject to the following requirements:

(1) No specified form of application is required.

(2) The lands shall be described in accordance with § 3461.1–1 of this title.

(3) Each application shall contain three copies of an exploration plan that complies with the requirements of § 3482.1 of this title.

(4) Each application and its supporting documents shall include a copy of the document of the regulatory authority directing the drilling.

(b) Applicants for a license for incidental exploration shall not be required to provide an opportunity for other parties to participate.

§ 3411.2–2 Environmental analysis.

(a) Before a license for incidental exploration may be issued, the authorized officer or the surface management agency, if other than the Bureau of Land Management, will perform and document an environmental review (e.g., categorical exclusion, environmental assessment, environmental impact statement, or administrative review). The documentation will address the potential effects of the proposed exploration on the affected area and be conducted in accordance with the requirements of the National Environmental Policy Act of 1969.

(b) The proposed exploration operation shall conform to the existing land-use plan.

§ 3411.3 Action on licenses for incidental exploration.

§ 3411.3–1 Issuance of licenses for incidental exploration.

(a) The authorized officer has the discretion to modify or reject the application or issue the license for incidental exploration. The authorized officer will include in each license for incidental exploration, as necessary, requirements and stipulations to protect the environment and associated natural resources and to ensure reclamation of the lands disturbed by exploration.

(b) A license for incidental exploration shall become effective on the date specified by the authorized officer. The license for incidental exploration will be issued for 2 years and may not be extended.

(c) an exploration plan approved in accordance with only those requirements at subpart 3482 of this title that relate to drilling wells shall be attached to and made a part of each license for incidental exploration.

(d) An exploration plan or license for incidental exploration may be modified by the authorized officer, if geologic or other conditions warrant.

(e) Exploration operations may not be conducted after the license for incidental exploration has expired. The licensee may apply for a new license for incidental exploration as described in this subpart. A new license for incidental exploration may be issued simultaneously with the expiration of the existing license for incidental exploration.

§ 3411.3–2 Limitations on licenses for incidental exploration.

(a) Exploration operations under these regulations shall not unreasonably interfere with or endanger operations authorized under any other Act or regulation. The issuance of a license for incidental exploration for an area shall not preclude the issuance of a lease under applicable regulations for that area. If a lease is issued for lands included in a license for incidental exploration, the license for incidental exploration shall be canceled on the effective date of the lease for those lands common to both.

(b) A license for incidental exploration may only be issued for the purpose of drilling any wells that may penetrate Federal coal, and that have been ordered to be drilled by the regulatory authority.

(c) No coal may be sold from operations conducted pursuant to a license for incidental exploration.

(d) No license for incidental exploration will be issued to any applicant that has outstanding violations pursuant to 30 CFR 773.15(b).

§ 3411.3–3 Operating regulations.

The licensee shall comply with the applicable provisions of the operating regulations in subpart 3482 of this title regarding the drilling of wells. Authorized representatives of the Secretary and, where appropriate, the surface management agency, shall be permitted to inspect the premises and operations. The licensee shall allow the free and unrestricted ingress and egress of Government officers and other persons using the land under authority of the United States.

§ 3411.3–4 Bonds.

Bonding provisions in subpart 3473 of this title apply to this subpart.

PART 3420—COMPETITIVE LEASING

3. The authority citation for part 3420 is revised to read as follows:

Authority: 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351–359; 30 U.S.C. 521–531 *et seq.*; 30 U.S.C. 1201 *et seq.*; 43 U.S.C. 1701 *et seq.*; and 15 U.S.C. 631 *et seq.*

Subpart 3420—Competitive Leasing

4. Section 3420.1–2 is amended by revising paragraph (b) to read as follows:

§ 3420.1–2 Call for coal resource and other resource information.

* * * * *

(b) Submissions pursuant to this section that the sender wishes kept confidential shall be marked in accordance with § 3400.7 of this title. Data so marked will be treated in accordance with the provisions of that section.

* * * * *

Subpart 3422—Lease Sales

5. Section 3422.1 is amended by revising paragraph (a) to read as follows:

§ 3422.1 Fair market value and maximum economic recovery.

(a) Not less than 30 days prior to the publication of a notice of sale, the Secretary will solicit public comments on fair market value (FMV) appraisal and the maximum economic recovery (MER) of the tract or tracts proposed to

be offered and on factors that may affect these 2 determinations. Submissions pursuant to this section that the sender wishes kept confidential shall be marked in accordance with § 3400.7 of this title. Data so marked will be treated in accordance with that section.

* * * * *

6. Section 3422.3–1 is amended by revising paragraph (a) to read as follows:

§ 3422.3–1 Bidding systems.

(a) The provisions of 30 CFR part 260 are not applicable to this part.

* * * * *

Subpart 3425—Leasing on application

7. Section 3425.4 is amended by revising paragraph (a)(2) to read as follows:

§ 3425.4 Consultation and sale procedures.

(a) * * *

(2) Prior to holding any lease sales under this subpart, the Secretary will consult with the entities and individuals listed in §§ 3420.4–2 through 3420.4–4 of this title.

* * * * *

PART 3430—NONCOMPETITIVE LEASES

8. The authority citation for part 3430 continues to read as follows:

Authority: 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351.359; 30 U.S.C. 521–531; 30 U.S.C. 1201 *et seq.*; and 43 U.S.C. 1701 *et seq.*

Subpart 3436—Coal Lease and Coal Land Exchanges: Alluvial Valley Floors

§§ 3436.1–1 and 3436.1–2 [Redesignated as §§ 3436.1–2 and 3436.1–3]

9. Sections 3436.1–1 and 3436.1–2 are redesignated as §§ 3436.1–2 and 3436.1–3, respectively.

§ 3436.0–5 [Redesignated as § 3436.1–1 and Amended]

10. Section 3436.0–5 is redesignated as § 3436.1–1 and the section heading is revised to read "Criteria."

PART 3440—LICENSES TO MINE

11. The authority citation for part 3440 continues to read as follows:

Authority: 30 U.S.C. 181 *et seq.*

Subpart 3440—Licenses to Mine

12. Section 3440.1–4 is amended by redesignating paragraph (c) as (d), revising paragraphs (a) and (b), and adding new paragraph (c) to read as follows:

§ 3440.1–4 Area and duration of license.

(a) A license to mine issued to an individual or association, in the absence of unusual conditions or necessity, shall be limited to a legal subdivision of 40 acres or less and may be revoked at any time.

(b) A license to mine issued to a municipality may not exceed 320 acres for a municipality of less than 100,000 population, 1,280 acres for a municipality between 100,000 and 150,000 population, and 2,560 acres for a municipality of 150,000 population or more.

(c) Each license to mine shall terminate at the end of 5 years from the date of issuance, unless an application for renewal is filed 60 days prior to the date of expiration.

* * * * *

13. Section 3440.1–7 is added to read as follows:

§ 3440.1–7 Bonds.

The bonding provisions in subpart 3473 of this title apply to this subpart.

PART 3450—[REMOVED]

14. Part 3450 is removed.

PART 3460—[REDESIGNATED AS PART 3450]

15. Part 3460 is redesignated as part 3450, and is amended by:

§§ 3465.0–1 through 3465.2–3 [Removed]

a. Removing Subpart 3465, consisting of §§ 3465.0–1 through 3465.2–3; and

Subpart 3461—[Redesignated as Subpart 3451]

b. Subpart 3461, consisting of §§ 3461.0–3, 3461.0–6, 3461.0–7, 3461.1, 3461.2, 3461.2–1, 3461.2–2, 3461.3, 3461.3–1, 3461.3–2, 3461.4, and 3461.5, is redesignated Subpart 3451, consisting of §§ 3451.0–3, 3451.0–6, 3451.0–7, 3451.1, 3451.2, 3451.2–1, 3451.2–2, 3451.3, 3451.3–1, 3451.3–2, 3451.4, and 3451.5, respectively.

16. The authority citation for newly redesignated part 3450 is revised to read as follows:

Authority: 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351–359; 30 U.S.C. 521–531 *et seq.*; 30 U.S.C. 1201 *et seq.*; and 43 U.S.C. 1701 *et seq.*

PART 3470—COAL MANAGEMENT PROVISIONS AND LIMITATIONS

§§ 3471.3, 3471.3–1, 3471.3–2, 3473.1 through 3473.4, and 3474.1 through 3474.6, and 3475.1 through 3475.6 [Removed]

17. Part 3470 is amended by removing §§ 3471.3, 3471.3–1, 3471.3–2, Subparts 3473 (consisting of §§ 3473.1 through 3473.4), 3474 (consisting of §§ 3474.1 through 3474.6), and 3475 (consisting of §§ 3475.1 through 3475.6).

PART 3470—[REDESIGNATED AS PART 3460]

18. a. Part 3470 is redesignated as part 3460;

Subpart 3471—[Redesignated as Subpart 3461]

b. Subpart 3471, consisting of §§ 3471.1, 3471.1–1, 3471.1–2, 3471.2, 3471.2–1, 3471.2–2, and 3471.4 is redesignated as Subpart 3461, consisting of §§ 3461.1, 3461.1–1, 3461.1–2, 3461.2, 3461.2–1, 3461.2–2, and 3461.3, respectively; and

Subpart 3472—[Redesignated as Subpart 3462]

c. Subpart 3472, consisting of §§ 3472.1, 3472.1–1, 3472.1–2, 3472.1–3, 3472.2, 3472.2–1, 3472.2–2, 3472.2–3, 3472.2–4, and 3472.2–5, is redesignated Subpart 3462, consisting of §§ 3462.1, 3462.1–1, 3462.1–2, 3462.1–3, 3462.2, 3462.2–1, 3462.2–2, 3462.2–3, 3462.2–4, and 3462.2–5, respectively.

19. The authority citation for newly redesignated part 3460 is revised to read as follows:

Authority: 30 U.S.C. 181 *et seq.* and 30 U.S.C. 351–359.

20. New § 3461.4 is added to read as follows:

§ 3461.4 Least terms.

(a) *Lease form.* Leases will be issued on a standard form approved by the Director. The authorized officer may add such additional stipulations and conditions as the authorized officer deems appropriate or as required by laws or regulations established subsequent to the promulgation of the final lease form.

(b) *Duration of leases.* Leases will be issued for a primary term of 20 years, subject to readjustment in accordance with subpart 3476, and for so long thereafter as the condition of continued operation is met.

(c) *Dating of leases.* (1) Leases will be dated and made effective the first day of the month following the date signed by the authorized officer. Upon receipt of a written request, the authorized officer may date a lease to be effective on the first day of the month in which it is signed.

(2) Future-interest leases shall become effective on the date of vesting of title to the minerals in the United States, as stated in the lease.

Subpart 3462—Lease Qualification Requirements [Amended]

21. Redesignated § 3462.1–2 is amended by revising paragraph (e)(4)(i)(A), redesignating paragraph (e)(6) as (e)(7), and adding paragraphs (e)(6), (e)(7)(ii)(G), and paragraph (h), to read as follows:

§ 3462.1–2 Special leasing qualifications.

* * * * *

(e) * * *

(4)(i) * * *

(A) Request for relinquishment of record-title to a lease; or

* * * * *

(6)(i) A disqualified entity that would be qualified pursuant to this section except for the disqualifying lease(s) of its subsidiary may be assigned the disqualifying leases upon liquidation of that subsidiary by the disqualified entity;

(ii) The disqualified entity shall not otherwise be qualified pursuant to this section as the result of such an assignment; and

(iii) If the disqualified entity's disqualification is the result of any holding of leases by other than the liquidated subsidiary, the disqualified entity must divest itself of the liquidated subsidiary's leases. If the disqualified entity does not comply with this requirement, the authorized officer will request the Department of Justice to bring proceedings to compel such divestiture pursuant to § 3475.3–1(c) of this title.

(7) * * *

(ii) * * *

(G) Subject to continued operation, the lease is not producing, and the operator/lessee has paid advance royalty in lieu of continued operation (an entity holding such a lease is disqualified under Section 2(a)(2)(A) of MLA from the beginning of each such continued operation year until the payment of advance royalty has been received by the Minerals Management Service).

* * * * *

(h) Any applicant for a lease, whether by issuance or transfer, shall submit with the application a certified statement listing all potentially disqualified affiliates. The certified statement shall include the extent of participation (including percent of ownership) held by each of the potentially disqualifying affiliations. The certified statement shall also include a listing of any entities that are participants in a joint venture and/or members of a partnership:

(1) That meets paragraph (1) of the definition of "potentially disqualifying affiliation" in § 3400.0–5 of this title; and

(2) In which an applicant for a lease, whether by issuance or transfer, is a participant and/or member.

24. Part 3470 is added to read as follows:

PART 3470—MANAGEMENT OF LEASES, LICENSES, AND LOGICAL MINING UNITS

Subpart 3471—Payments and Fees

Sec.

Subpart 3472—Rentals and Royalties

Subpart 3473—Bonds

Subpart 3474—Transfers by Assignment, Sublease, and Otherwise

Subpart 3475—Relinquishment, Cancellation, Termination, and Expiration

Subpart 3476—Continuation of Leases—Readjustment of Terms

Subpart 3477—Logical Mining Unit (LMU) Application Processing

Sec.

Subpart 3478—Lease Suspensions

Authority: 30 U.S.C. 181 *et seq.* and 30 U.S.C. 351–359.

Subpart 3471—Payments and Fees

§ 3471.1 Payments.

§ 3471.1–1 Form of remittance.

All remittances shall be by U.S. currency, or cashier's check, or certified check payable in U.S. currency, and shall be made payable to the Department of the Interior-Bureau of Land Management or the Department of the Interior-Minerals Management Service, as appropriate. For payments submitted to the Minerals Management Service, see 30 CFR 218.51(a) for electronic funds transfer requirements.

§ 3471.1–2 Where submitted.

(a)(1) All first-year rentals and the first-year portions of all deferred bonuses for leases issued under Group 3400 of this title shall be submitted to the Bureau of Land Management State Office having jurisdiction over the lands (subpart 1821 of this title).

(2) All second-year and subsequent rentals and deferred bonus amounts payable after the initial payment for the lease shall be submitted on or before the anniversary date to the Minerals Management Service.

(b) All royalties on producing leases, all payments under leases in their minimum production period, and all advance royalty payments shall be submitted to the Minerals Management Service.

§ 3471.1–3 When paid.

The first-year rental for preference-right leases shall be remitted at the time of filing the applications. The first-year rental for competitive leases shall be payable when required by decision of the authorized officer.

§ 3471.2 General fee provisions.

(a)(1) A nonrefundable filing fee of $250.00 shall accompany each application for a lease, exploration license, or lease modification.

(2) A nonrefundable filing fee of $50.00 shall accompany each instrument of transfer of a lease or an interest therein.

(b) No filing fee is required for any other action submitted to the authorized officer.

Subpart 3472—Rentals and Royalties

§ 3472.1 Rentals.

(a) Until a lease issued before August 4, 1976, is either readjusted or modified after August 4, 1976, whichever occurs first, the annual rental per acre or fraction thereof shall be paid at the rate specified in each lease. Such rental payments shall be credited against the production royalties for that lease year.

(b) The annual rental per acre or fraction thereof on any lease issued, readjusted, or modified pursuant to these regulations, shall be $3.00. The amount of the rental will be specified in the lease. Such rental payments shall not be credited against production royalties for any lease year commencing on or after the effective date of issuance, readjustment, or modification.

(c) Rentals paid for any lease year shall not be credited against advance royalty payments.

§ 3472.2 Royalties.

§ 3472.2–1 Royalty rates.

(a) *Surface-mined coal.* The royalty rate shall be a minimum of 12½ percent of the value of the coal removed from the lease, except as provided in § 3476.1(b) of this title.

(b) *Underground-mined coal.* The royalty rate shall be a minimum of 8 percent of the value of the coal removed from the lease, except as provided in § 3476.1(b) of this title.

(c) *Logical mining units.* Lease-specific royalty rates are not affected by inclusion of leases in an approved LMU.

(d) *Waste piles or slurry ponds.* In the event waste piles or slurry ponds are reworked to recover coal, or if a market becomes available to sell the waste products containing coal, the operator/lessee shall pay the Federal royalty at the rate specified in the lease at the time of reworking. Payment shall be based on the Federal share of the coal regardless of whether it is stored on Federal lands. Nothing in this paragraph (d) requires payment of a Federal royalty on Federal coal for which a Federal royalty has already been paid.

(e) *In situ.* If a lease is developed by *in situ* technology, the authorized officer will establish a procedure for estimating tonnage for royalty purposes.

(f) *Value.* The value of coal removed from a lease is determined in accordance with 30 CFR Chapter II, Subchapter A (see § 3400.0–6(b)(1)).

(g) *Lease issuance.* All leases will be issued with royalty rates as prescribed in this subpart.

(h) *Lease readjustment.* Any lease subject to readjustment shall be readjusted with royalty rates as prescribed in this subpart except as provided in § 3476.1(b) of this title.

(i) *Lease modification.* The minimum royalty rates, as stated in paragraphs (a) and (b) of this section, shall be applicable to the lands or recoverable coal reserves included in the lease modification. If the original lease was issued prior to August 4, 1976, and has not been readjusted since that date, the minimum royalty rates in paragraphs (a) and (b) of this section shall not apply to any lands covered by the original lease until such time as the lease is readjusted.

§ 3472.2–2 Advance royalty.

Provisions for the payment of advance royalty in lieu of continued operation are contained at §§ 3484.2–3 and 3485.4–3 of this title.

§ 3472.2–3 Payment-out-of-production.

Agreements creating a payment-out-of-production shall be filed in accordance with § 3474.2–3 of this title.

§ 3472.2–4 Reduction of rent and/or royalty.

(a) *General.*

(1) The authorized officer may waive, suspend, or reduce the rental on a lease, or reduce the royalty rate. The authorized officer will take such action for the purpose of encouraging the greatest ultimate recovery of coal and, in the interest of conservation of natural resources, whenever in his judgment it is necessary to promote development or if he finds that the lease cannot be successfully operated under the terms of that lease.

(2) The royalty rate shall not, under any circumstance, be reduced below 2 percent of the value of the coal removed from the lease, as determined in accordance with 30 CFR Chapter II, Subchapter A.

(3) The authorized officer may not waive, suspend, or reduce any advance royalty paid in lieu of continued operation.

(4) The authorized officer may not waive, suspend, or reduce the bonus portion of the royalty bid received, if any, in a competitive lease sale.

(5) Royalty rate reduction applications will be acted upon separately from lease issuance, lease readjustment, or lease modification. In no case may a reduction in royalty rate, as determined in accordance with paragraph (b) of this section, be specified in the terms of lease issuance, readjustment, or modification.

(b) *Royalty reduction categories.* Royalty reduction applications will only be accepted in one of the following five categories.

(1) *Expanded recovery:* Where an operator/lessee certifies that, without a royalty rate reduction, either:

(i) Adverse geologic and engineering conditions make the solid leasable mineral resources identified in the application economically unrecoverable at the lease royalty rate using current standard industry operating practices, or

(ii) Where the lease royalty rate, all geologic and engineering conditions being the same or similar, makes the solid leasable mineral resources identified in the application likely to be bypassed because they are less economically recoverable than resources on non-Federal leases that are part of the near-term mining sequence within the same operation.

(2) *Extension of mine life:* Near the end of mine life, where a reduced

royalty rate would extend the period during which mining would occur and thereby enhance the greatest ultimate recovery of solid leasable mineral resources. The operator/lessee shall certify that adverse geologic and engineering conditions make these incremental resources economically unrecoverable, using current standard industry operating practices, without a royalty rate reduction.

(3) *Financial test unsuccessful operations:* Where operations on a lease are not financially profitable under the terms of the lease, with lease operating costs exceeding lease production revenue. The authorized officer, with the assistance of the Minerals Management Service, will evaluate the financial justification of such applications based on the submission of detailed operating data as well as the geologic and engineering data required in paragraphs (b) (1) and (2) of this section.

(4) Financial test expanded recovery/extension of mine life: Where operators/lessees qualifying under paragraphs (b) (1) or (2) of this section request a royalty rate reduction to a level below the specified rates set forth in this section for those categories. A degree of profitability would be allowed as an incentive to produce these resources. The authorized officer, with the assistance of the Minerals Management Service, will confirm the financial basis of such applications based on the submission of detailed operating data as well as the geologic and engineering data required in paragraphs (b) (1) and (2) of this section.

(5) *Geographic area royalty rate differentials:* Where the authorized officer has recognized that the royalty rate on Federal coal reserves is not competitive with the royalty rate on non-Federal coal reserves, and this royalty rate differential causes Federal coal to be bypassed or to remain undeveloped in the qualifying geographic areas.

(c) *Application requirements for reduction of royalties.* (1) Three copies of an application for a reduction of royalties shall be filed in the Bureau of Land Management State Office having jurisdiction over the lands (Subpart 1821 of this title).

(2) An application for a royalty rate reduction shall identify the lease serial number(s), the names and addresses of the record-title holder(s) and the operator/lessee, if other than the record-title holder(s), and the Bureau of Land Management State Office, and shall include the description of the lands (§ 3461.1 of this title). Each application shall also include:

(i) The mine name and location; a map illustrating the extent of the existing, proposed, and/or adjoining mining operations; a tabulated statement of the Federal and non-Federal coal mined, if any, and subject to Federal royalty for the existing or adjoining operation covering a period of not less than 12 months before the date of filing of the application; existing Federal rental and royalty rates on the lease covered by the application; the extent and location of coal resources, if any, that would either be permanently lost or considered economically not recoverable for the applicant or subsequent parties, and in all likelihood these coal resources would be bypassed; and the extent and location of additional Federal coal that would be mined if the royalty rate reduction were to be approved;

(ii) A certification that all bonus, rental, and royalty accounts are in good standing.

(iii) A detailed statement of:

(A) Expenses and costs of operation of the entire mine, as well as the income from the sale of coal, and all facts indicating whether the mine can be successfully operated under the Federal rental and royalty provisions fixed in the lease. If the lease included in the application is not part of, nor adjoining, an operating mine, these detailed financial data may be obtained from another operating mine which is in close proximity and for which the authorized officer has determined to have similar operating characteristics; or

(B) Why the reduction is necessary to promote development;

(iv) Where the application is for a reduction in the Federal royalty, full information as to whether royalties or payments-out-of-production are paid to parties other than the United States, the amounts so paid, and efforts made to reduce them;

(v) A copy of agreements between the operator/lessee and the holders of any payment-out-of-production, other than those created in order to finance the mine; and

(vi) Any other information deemed necessary by the authorized officer for the purpose of making a decision.

(3) Applications for reduction of royalty will be evaluated in accordance with these regulations and Bureau of Land Management policy.

(4) The total payment-out-of-production shall not exceed one-half of the Federal royalties established in an approved royalty reduction, should the royalty reduction be granted.

(5) The authorized officer will evaluate the justification of applications submitted under this section and, based on the application, determine whether a reduction of rent or royalty is necessary, based on the requisite criteria.

Subpart 3473—Bonds

§ 3473.1 Bonding requirements.

(a) A lease bond, conditioned on compliance with established requirements, shall be furnished in the amount determined by the authorized officer for each lease.

(1) Bond coverage for leases with deferred bonus payments shall be sufficient to cover the amount of unpaid bonus in addition to all other bond requirements. As bonus is paid, the bond may be reduced by an equivalent amount if the lease account is in good standing;

(2) Bond coverage for nonproducing and inactive leases subject to MLA diligence shall be equivalent to the annual lease rental, rounded up to the next even $1,000, but in no case less than $5,000;

(3) Bond coverage for nonproducing and inactive leases not subject to MLA diligence shall be equivalent to the annual lease rental plus 1 year's minimum production royalty, rounded up to the next even $1,000, but in no case less than $5,000;

(4) For producing leases:

(i) For royalty payments made monthly, the amount of bond shall be sufficient to cover 3 months of royalty as estimated by the authorized officer plus 1 year's rent rounded up to the next even $1,000, but in no case less than $5,000; and

(ii) For royalty payments made on a quarterly basis, the amount of bond shall be sufficient to cover 5 months of royalty as estimated by the authorized officer plus 1 year's rent rounded up to the next even $1,000, but in no case less than $5,000.

(b) A bond of not less than $5,000 shall be furnished prior to issuing an exploration license or license for incidental exploration. The bond shall be conditioned upon:

(1) Compliance with established requirements; and

(2) Ensuring compensation for damages caused by the licensee to surface improvements made by surface owners when an exploration license or a license for incidental exploration embraces such lands, in the absence of an agreement between the exploration licensee and the surface owner so providing.

(c) A bond of not less than $1,000 shall be furnished prior to issuance of a license to mine. The bond shall be conditioned upon compliance with established requirements.

(d) For LMU's:

(1) Upon approval of an LMU including more than one Federal lease, the lessee may, in lieu of individual lease bonds, furnish and maintain a bond for the LMU conditioned upon compliance with established requirements. In order to determine the amount of an LMU bond, each lease will be evaluated individually, using the criteria set out in paragraph (a) of this section, as if the lease(s) were not contained in an LMU. The sum of each of the individual lease bond requirements will be the minimum amount of the bond required for the LMU.

(2) When an LMU is terminated or dissolved, individual Federal leases remaining from the LMU shall be covered by individual lease bonds as prescribed in paragraph (a) of this section.

(3) If a new lease is added to an LMU, the bonding obligation for that lease may be met by an adjustment to the existing LMU bond or the lease may continue with its individual bond.

(e) For approved mining plans:

(1) Upon approval of a mining plan including more than one Federal lease, the lessee(s) may, in lieu of individual lease bonds, furnish and maintain a bond for the mining plan conditioned upon compliance with the established requirements, provided that the mining plan bond:

(i) Has been determined by the authorized officer to be warranted for the single, approved mining operation, based on a finding that individual lease bonding is inefficient, either to the operator/lessee or to the Federal Government;

(ii) Is provided by a single surety and principal (e.g., operator/leassee) identified for all of the Federal leases in the single, approved mining operation; and

(iii) Must be sufficient to address the total of all of the established requirements for each federal lease contained on the specific, approved mining operation, listing the lease-specific bond obligations and coverage.

(2) In order to determine the amount of a mining plan bond, each lease will be evaluated individually, using the criteria set out in paragraph (a) of this section, as if the lease(s) were not contained in an approved mining plan.

(3) A mining plan bond shall be equivalent to the total of the individual lease bond requirements set out in paragraph (a) of this section, rounded up to the next $1,000, but not less than $5,000.

(4) The mining plan bond or bond rider shall specifically list all leases individually.

(5) If a new lease is added to the approved mining plan, the bonding obligation for that lease may be met by an adjustment to the existing mining plan bond or the lease may continue with its individual bond.

(f) Bonds will be reviewed at least annually to ensure adequacy and bond requirements will be adjusted, as necessary, by the authorized officer. The authorized officer may otherwise elect to increase or decrease the amount of any bond when a change in coverage is determined appropriate, except no bond may be reduced below the minimum amount established by this section.

(g) In the event of nonpayment of royalty which results in a notice of delinquency issued by the Minerals Management Service, the authorized officer will issue a notice of noncompliance which includes an order to the operator/lessee to increase the lease bond to cover the amount of delinquency. The bond may not be reduced again until the authorized officer receives verification from the Minerals Management Service that the noncompliance has been corrected and timely payment of royalties has been resumed for at least two consecutive royalty reporting periods.

§ 3473.2 Type of bond required.

(a) Before an exploration license, license for incidental exploration, lease, or license to mine may be issued, or an LMU approved, the operator/lessee shall submit a surety or personal bond as described in this subpart.

(b) Surety bonds shall be issued by qualified surety companies approved by the Department of the Treasury (see § 3473.3 of this title).

(c) Personal bonds shall be secured by:

(1) Cash;

(2) Cashier's check;

(3) Certified check; or

(4) Negotiable Treasury securities of the United States having a market value at the time of the deposit of not less than the required dollar amount of the bond. Negotiable Treasury securities shall be accompanied by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the terms and conditions of the exploration license, license for incidental exploration, lease, license to mine, or LMU.

(d) The successful applicant, bidder, or operator/lessee shall file the bond, within 30 days of receiving notice and on a form approved by the Director, in the Bureau of Land Management State Office having jurisdiction over the lands (Subpart 1821 of this title). A single, signed copy executed by the principal or, in the case of corporate surety bonds, by both the principal and an acceptable surety, is sufficient.

§ 3473.3 Qualified sureties.

Only those surety bonds issued by qualified surety companies approved by the Department of the Treasury as acceptable sureties on Federal bonds under the Act of July 30, 1947 (6 U.S.C. 6–14), shall be acceptable. (See Department of Treasury Circular No. 570, any supplemental circulars, or any replacements. Copies may be obtained by writing to: Department of the Treasury, Financial Management Services, 401 14th Street, SW., Room 262, Washington, DC 20227.)

§ 3473.4 Default.

(a) In the event of a default by the lessee or licensee, the Federal Government will attach the bond for the lease, exploration license, license for incidental exploration, license to mine, or LMU.

(b) When the surety makes payment to the Federal Government of any indebtedness incurred under a lease, exploration license, license for incidental exploration, license to mine, or LMU, the face amount of the bond and the surety's liability thereunder will be reduced by the amount of such payment.

(c) If the bond for the lease, exploration license, license for incidental exploration, license to mine, or LMU is attached in whole or in part, the lessee or licensee shall be required to take immediate action within 30 days to restore or replace the bond to its former amount or at such other level as required by the authorized officer.

§ 3473.5 Termination of the period of liability.

(a) The authorized officer will not consent to termination of the period of liability under a bond for a lease, exploration license, license for incidental exploration, license to mine or LMU until all established requirements have been met or until an acceptable, substitute bond has been filed and accepted.

(b) In addition, the authorized officer will not consent to the termination of the period of liability under a bond for an exploration license or license for incidental exploration where the surface of the land being explored is privately owned and the licensee does not have an agreement with the surface owner, as provided in § 3473.1(b) (2) of this title.

(c) The authorized officer will, 30 days prior to the effective date of termination of a bond for an exploration license or license for incidental exploration, inform the surface owner, in writing of the termination requesting acceptance, in writing, of reclamation performed by the operator/ lessee. Should the licensee and any surface owner be unable to agree on the adequacy of the reclamation, the authorized officer will make the final determination.

(d) Liability under a bond issued for a license for incidental exploration may be released upon expiration and/or relinquishment of the license for incidental exploration, provided that reclamation has been performed or that the regulatory authority assumes the bonding responsibility for the water-monitoring well.

Subpart 3474—Transfers by Assignment, Sublease, and Otherwise

§ 3474.1 Filing location and fee.

(a) Instruments of transfer shall be filed in the Bureau of Land Management State Office having jurisdiction over the lands (Subpart 1821 of this title).

(b) Each instrument of transfer filed pursuant to this subpart shall be accompanied by a nonrefundable filing fee (§ 3471.2 of this title). Any instrument of transfer not accompanied by the filing fee will not be accepted.

§ 3474.2 Filing requirements.

§ 3474.2–1 Record-title assignments.

(a) *Leases.* (1) *Assignment document.* Leases may be assigned in whole or in part, except as provided under §§ 3420.1–3(b)(l)(iv) and (b)(2)(ii) of this title, to any entity qualified under subpart 3462 of this title. No specific form is required, but the assignment document shall contain the following information:

(i) Name and address of assignor(s) and assignee(s);

(ii) Serial number of the lease(s);

(iii) The assigned lands described in accordance with subpart 3461 of this title;

(iv) A statement of the interest assigned and the interest retained by the assignor; and

(v) The date executed and the signature of the assignor and the assignee, or of a person authorized to act on behalf of each, respectively.

(2) *Request for approval.* The assignee shall file a single request for approval of the assignment within 90 days of its execution. When assignments to the same entity involving more than one lease are filed at the same time, one request for approval will be sufficient. No specific form is required, but the request shall contain the following information:

(i) Three copies of a separate assignment document, as described in paragraph (a)(1) of this section, for each lease.

(ii) The assignee's qualifications under subpart 3462;

(iii) The date of execution of the request;

(iv) The antitrust information for review by the Attorney General as specified in § 3422.3–4(a);

(v) A description of all consideration or value paid or promised for the assignment, whether cash, property, future payments, or any other type of consideration paid or promised (see Guidance on Coal Lease Transfer Financial Data Requirements at 51 FR 24752–24755, July 8, 1986; and copies may be obtained by writing to: Bureau of Land Management (WO–660), 1849 C Street, NW., rm. 3411, Washington, DC 20240);

(vi) Any additional information requested by the authorized officer.

(3) Information submitted to comply with paragraph (a)(2)(iv) of this section that the sender wishes kept confidential shall be marked in the manner prescribed at § 3422.3–4(g) of this title. Information so marked will be treated in accordance with that section.

(4) Information submitted to comply with this section, other than that submitted under paragraph (a)(2)(iv), that the sender wishes kept confidential shall be marked in accordance with § 3400.7 of this title. Data so marked will be treated in accordance with that section.

(5) If the assignee omits any of the information required in paragraphs (a)(1) and (a)(2) of this section, the authorized officer will request the omitted information, specifying the information required.

(6) The assignee shall submit any requested omitted or additional information within 30 days of the receipt of the request. One 30-day extension may be granted if the assignee files a written request within the first 30-day period.

(b) *Preference-right lease applications.* Preference-right lease applications may be assigned in whole only to an entity qualified under subpart 3462 of this title. If a partial assignment of a preference-right lease application is filed, no action will be taken on it until after the preference-right lease is issued. Assignments for preference-right lease applications shall be filed in accordance with paragraph (a) of this section; however, the information required by paragraphs (a)(l)(iv), (a)(2)(iv), and (a)(2)(v) is not necessary.

(c) *Exploration licenses and licenses for incidental exploration.* Exploration licenses and licenses for incidental exploration may be transferred in whole or in part to any entity. Qualification under subpart 3462 of this title is not required. Assignments of exploration licenses and licenses for incidental exploration shall be filed in accordance with paragraph (a)(1) of this section.

(d) *Licenses to mine.* Licenses to mine issued under subpart 3440 of this title may be assigned in whole only, and only if the assignee is qualified under § 3440.1–2 of this title.

§ 3474.2–2 Subleases.

An application for approval of a sublease or operating agreement shall be filed for approval in accordance with § 3474.2–1(a) of this title.

§ 3474.2–3 Payment-out-of-production assignments.

An assignment of payment-out-of-production shall be filed for record purposes only. A request for approval is not required.

§ 3474.2–4 Designated operator agreements.

A designated operator agreement shall be filed for record purposes only. A request for approval is not required.

§ 3474.2–5 Collateral assignments and other security documents.

Collateral assignments and other security or mortgage documents will not be accepted for filing.

§ 3474.3 Approval and disapproval.

§ 3474.3–1 Approval.

(a) *Lease account.* Before a lease assignment or sublease may be approved, the lease account shall be in good standing.

(b) *Bonds.* Before an assignment of record-title interest in a lease, exploration license, license for incidental exploration, or license to mine may be approved, an acceptable bond with the assignee as principal shall be furnished. See subpart 3473 of this title for bonding information.

(1) The assignor and its surety shall continue to be responsible for the performance of any obligation under the lease, exploration license, license for incidental exploration, or license to mine until the effective date of the approval of the assignment. Thereafter, the assignor and its surety shall continue to be responsible for any portion of the lease or license retained.

(2) If the assignment is not approved, the obligations of the assignor and its

surety shall continue as though no such assignment had been filed for approval.

(3) Upon the effective date of approval of the assignment, the record-title holder(s) and its surety shall be fully responsible for all lease, exploration-license, license-for-incidental-exploration, or license-to-mine obligations, notwithstanding any terms of the assignment to the contrary.

(4) No bond will be required for an assignment of a preference-right lease application or from a sublessee.

(c) *Compliance with requirements.* If the requirements of paragraphs (a) and (b) are satisfied and if the assignee has satisfied the filing and qualifications requirements of § 3474.2–1, the authorized officer will approve the transfer.

§ 3474.3–2 Disapproval.

An assignment will be disapproved if:

(a) The assignee fails to respond to a request for additional or omitted information within the time period specified in § 3474.2–1(a)(6) of this title; or

(b) The assignee otherwise fails to meet statutory requirements or the regulatory requirements of this subpart.

§ 3474.4 Effect of partial assignment.

(a) When an assignment is made of all the record-title interest to a portion of the acreage contained in a lease, exploration license, or license for incidental exploration, the assigned and retained portions of the lease, exploration license, or license for incidental exploration, are divided into separate and distinct leases or licenses. Each such segregated lease or license will be assigned a new serial number and will retain the anniversary date and all the terms and conditions of the original lease or license.

(b) An assignment of record title to any bed(s) of coal deposits in a lease shall segregate the assigned and retained portions into separate and distinct leases in the same manner as provided in paragraph (a) of this section.

(c) The issuance of new serial numbers to segregated leases does not constitute a lease readjustment or modification.

(d) An assignment of an undivided, record-title interest in a lease, exploration license, or license for incidental exploration, shall not segregate the divided interests into separate leases or licenses. The holders of undivided record-title interests in a lease, exploration license, or license for incidental exploration shall be jointly and severally liable for all lease or license obligations.

§ 3474.5 Effect of approval of transfer on terms.

(a) The approval of any assignment or sublease will not alter any terms or extend any time periods under the lease, including readjustment and MLA diligence.

(b) For purposes of section 2(a)(2)(A) of MLA, an arm's-length lease assignment or sublease to an entity that has never held the lease being assigned or subleased results in a new 10-year holding period for the assignee or sublessee.

(c) The filing or approval of an assignment of an exploration license or license for incidental exploration will not extend its 2-year term.

(d) The filing or approval of an assignment of a license to mine will not extend its 5-year term.

§ 3474.6 Effective date.

(a) A lease, exploration license, license for incidental exploration, license to mine, assignment, or sublease shall be effective the first day of the month following its approval or, if the assignee or sublessee so requests in writing, the first day of the month in which it is approved.

(b) The Governor of the affected State will be notified of the approval of any lease assignment.

Subpart 3475—Relinquishment, Cancellation, Termination and Expiration

§ 3475.1 General.

If a lease is relinquished, canceled, terminated, or expires, for any reason, all outstanding deferred bonus payments and all outstanding rentals and royalties, including advance royalty, that are due shall be immediately payable. All bonus, rentals, and royalties, including advance royalty, that have already been paid shall be forfeited to the United States.

§ 3475.2 Relinquishment.

§ 3475.2–1 General.

(a) A lessee or licensee may relinquish the entire lease, exploration license, license for incidental exploration, or license to mine, or surrender a legal subdivision thereof, aliquot part thereof (not less than 10 acres), or any bed of the coal deposit therein. A partial relinquishment shall describe clearly the surrendered parcel or coal deposits and give the exact acreage relinquished. If the applied for relinquishment is of reserves only, the authorized officer will make a written determination that approval of such a relinquishment is in the public interest.

(b) Only an entire LMU may be relinquished and only with the written consent of all lessees holding record-title interest in leases contained in the LMU.

(c) Until the relinquishment of the lease, exploration license, license for incidental exploration, license to mine, or LMU is accepted, all terms and conditions of the lease, license, or LMU including rental and royalty indebtedness as of the date of filing, shall remain in full force and effect.

(d) A bond based on the continued obligations of the lessee(s) or licensee and the surety shall be maintained until the authorized officer accepts the relinquishment.

(e) Partial, undivided record-title relinquishments will not be accepted.

§ 3475.2–2 Where filed.

A relinquishment shall be filed by the lessee or licensee in the Bureau of Land Management State Office having jurisdiction over the lands involved (subpart 1821 of this title).

§ 3475.2–3 Effective date.

Upon approval of the relinquishment by the authorized officer, the effective date of the relinquishment of a lease, exploration license, license for incidental exploration, or license to mine will be the date that all the obligations of the lease or license have been met or the date that the relinquishment was filed, whichever occurs later.

§ 3475.3 Cancellation.

§ 3475.3–1 Leases.

(a) *General.* The Governor of the affected State will be given notice when the Bureau of Land Management requests initiation of lease cancellation.

(b) *Default.* (1) If a lessee fails to comply with a notice of noncompliance, then the lessee will be served a notice of cancellation that allows him 30 days prior to taking steps to cancel the lease pursuant to this section to:

(i) Submit evidence showing why the lease should not be canceled pursuant to this section.

(ii) Request an extension of time within which to correct the default; or

(iii) Correct the default;

(2) A lease may be canceled pursuant to this section only through appropriate steps taken to institute proceedings in a court of competent jurisdiction.

(c) *Illegal interest.* If an interest in any lease is owned or controlled, directly or indirectly, by means of stock or otherwise, in violation of any of the provisions of MLA, the lease may be canceled, or the interest so owned may

be forfeited, or the person so owning or controlling the interest may be compelled to divest the interest, only by judicial proceedings in the manner provided by Section 27(h)(1) of MLA (30 U.S.C. 184(h)(1)).

(d) *Protection of bona fide purchaser.* (1) The Secretary's right to pursue the cancellation or forfeiture of a lease for any violation will not adversely affect the title or interest of a bona fide purchaser of any lease or any interest therein.

(2) Any party to any proceedings with respect to a violation of any provision of the mineral leasing laws will be dismissed promptly as a party upon a showing that it acquired and holds its interest as a bona fide purchaser without having violated any provision of the mineral leasing laws.

(3) If a bona fide purchaser waives its rights under the lease, or if such rights are suspended by order of the Secretary pending a decision, rental payments and time counted against the term of the lease will be suspended as of the first day of the month following the filing of the waiver or the Secretary's suspension until the first day of the month following the final decision in the proceeding or the revocation of the waiver or suspension.

(e) *Sale of underlying interests.* If, in any proceeding to cancel or forfeit a lease or any interest therein acquired in violation of any of the provisions of the mineral leasing laws, the lease or interest therein is canceled or forfeited and, if there are valid options to acquire the lease or any interest therein that are not subject to cancellation, forfeiture, or compulsory disposition, this lease or interest therein will be sold to the highest bidder by competitive bidding, subject to all outstanding valid interests and options. If a partial interest in the lease is canceled or forfeited, the partial interest will be sold in the same way. If no satisfactory offer is obtained as a result of the competitive offering of a whole or partial interest, it may be sold by other methods that the authorized officer deems appropriate. However, the terms will not be less favorable to the Federal Government than those of the best competitive bid received.

(f) *Improperly issued leases.* Leases will be subject to cancellation if improperly issued.

§ 3475.3-2 Licenses.

An exploration license, license for incidental exploration, or license to mine may be canceled by the authorized officer for noncompliance with established requirements after the licensee has been notified of the violation(s) in writing and has failed to correct the violation(s) within the period prescribed in the notice.

§ 3475.3-3 Logical mining units.

An LMU may be canceled for failure to comply with the established requirements or if improperly approved.

§ 3475.4 Termination.

(a) Any lease subject to MLA diligence, or LMU, shall terminate pursuant to authority of law if the lease or LMU does not meet the diligent development requirement.

(b) The lease or LMU termination date will be the last day of the lease or LMU diligent development period.

(c) The operator/lessee will be notified of lease or LMU termination by decision of the authorized officer.

§ 3475.5 Expiration.

(a) Any lease that is subject to MLA diligence shall expire pursuant to authority of law at the end of its primary term, or at the end of any year thereafter, if the operator/lessee is not satisfying continued operation.

(b) An exploration license, license to mine, license for incidental exploration, or LMU shall expire at the end of its term without notice.

Subpart 3476—Continuation of Leases—Readjustment of Terms

§ 3476.1 Readjustment of lease terms.

(a)(1) All leases issued prior to August 4, 1976, will be subject to readjustment on the lease anniversary date at the end of the 20-year term in existence on August 4, 1976, and at the end of each subsequent 10-year period if the lease is extended.

(2) All leases issued after August 4, 1976, will be subject to readjustment on the lease anniversary date at the end of the 20-year primary term and at the end of each subsequent 10-year period if the lease is extended.

(b) Upon lease readjustment, the terms and conditions of each lease will be made to conform with all existing laws and regulations to the extent that such laws and regulations have not already been incorporated in the specific lease terms, except that leases issued or readjusted with royalty rates greater than 12½ percent for surface-mined coal and/or greater than 8 percent for underground-mined coal will be readjusted to a royalty rate of not less than the rate(s) prescribed in such lease document.

(c) The Attorney General will be notified of the readjusted lease terms at least 30 days prior to the anniversary date on which the lease is readjusted. If the Attorney General wishes to review the readjustment, the lessee may be required to furnish the information specified in § 3422.3-4 of this title.

(d) The Governor of the affected State will be sent a copy of the readjusted lease terms.

§ 3476.2 Readjusted lease terms.

(a) The State Director's decision document transmitting the readjusted lease terms and conditions to the lessee(s) of record will constitute the final action of the Bureau of Land Management on all the provisions contained in a readjusted lease and will be provided to the lessee(s) of record prior to the anniversary date on which the lease is readjusted.

(b) The readjusted lease terms and conditions will become effective on the anniversary date as specified in § 3476.1(a) of this title.

(c) If an appeal is filed by the lessee(s) pursuant to 43 CFR part 4, all of the readjusted lease terms and conditions, including, but not limited to, the reporting and payment of rental and royalty, shall be effective.

Subpart 3477—Logical Mining Unit (LMU) Application Processing

§ 3477.1 General.

(a) The authorized officer may direct, or an operator/lessee may initiate, the establishment of an LMU. LMU's shall be subject to MLA diligence. Any Federal lease included in an LMU will have its terms and conditions superseded, but not revised or suspended, for the period of time the lease is in the LMU so that its terms and conditions are consistent with the LMU stipulations. If an LMU will contain Federal leases that are not yet subject to MLA diligence, the operators/lessees shall consent to making the Federal leases subject to MLA diligence for the duration of the LMU to ensure that all Federal leases in the are subject to uniform requirements specified in the stipulations. Approval of an LMU does not alter individual lease rental and royalty rates. The regulations of group 3400 of this title apply to all LMU's, except where subpart 3477 or subpart 3485 of this title specifically provides otherwise.

(b) The holder of any lease issued or readjusted between May 7, 1976, and the effective date of this regulation, whose lease provides by its own terms that it is considered to be an LMU, may request removal of this provision from any such lease. Such request shall be submitted to the authorized officer.

§ 3477.2 Application.

§ 3477.2–1 Formation criteria.

The application for an LMU or LMU modification shall satisfy the following:

(a) Within the LMU boundary, the recoverable coal reserves shall be capable of being mined in an efficient, economical, and orderly manner as a unit, with due regard to conservation of the recoverable coal reserves and other resources;

(b) The LMU may consist of one or more Federal leases and may include intervening or adjacent lands in which the United States does not own the coal;

(c) All lands and coal in the LMU shall be under the effective control of a single designated operator;

(d) All lands shall be able to be developed and operated as a single operation;

(e) All lands within the LMU shall be contiguous;

(f) Mining operations shall achieve maximum economic recovery (MER) of the Federal coal within the LMU;

(g) The LMU shall not exceed 25,000 acres, including both Federal and non-Federal lands; and

(h) The operator/lessees shall agree to the LMU stipulations in § 3477.2–4 of this title.

§ 3477.2–2 Contents of an LMU application.

An operator/lessee shall submit 3 copies of an LMU application to the authorized officer. Each application and its supporting documents shall include the following:

(a) For all coal and land to be included in the LMU, the name and address of:

(1) The designated operator;

(2) The operator/lessee(s) for all leases; and

(3) The holder(s) of all non-Federal coal and, if different, all non-Federal surface.

(b) Federal lease serial number and description of the land and all coal beds considered to be of minable thickness within the boundary of the LMU. If the proposed LMU will contain at least one Federal lease that is not yet subject to MLA diligence, a statement of consent to LMU formation and to subject unreadjusted leases to MLA diligence for LMU's from all lessees whose Federal leases will be included in the LMU.

(c) Identification of coal beds proposed to be mined and those proposed to be excluded from any Federal lease to be included in the LMU.

(d) Estimates of the Federal and non-Federal LMU recoverable coal reserves using data acquired by generally accepted exploration methods.

(e) A schedule for the achievement of diligent development and continued operation for the LMU, showing that the LMU recoverable coal reserves will be mined out within 40 years.

(f) Documents and related information to substantiate that all lands to be included in the LMU are under the effective control of a single designated operator, will be developed and mined as a single operation, and are contiguous. Such documentation includes, but is not limited to, evidence showing that the operator/lessee has the right to enter the non-Federal surface, and the right to mine the non-Federal coal, that is proposed to be included in the LMU.

(g) Sufficient data to determine that MER of the Federal leases will be achieved by mining operations on the established LMU. If a coal bed, or portion thereof, is proposed either to be rendered unminable by the operation or not to be mined, the operator/lessee shall submit appropriate justification to the authorized officer for approval.

(h) Any other information required by the authorized officer.

(i) If any information is identified as confidential by the operator/lessees, it will be treated in accordance with § 3400.7 of this title.

§ 3477.2–3 Consultation and public participation.

(a) *Consultation.* Prior to approval, the authorized officer will consult with the operator/lessee about any Federal recoverable coal reserves that the operator/lessee does not intend to mine and any Federal recoverable coal reserves that the operator/lessee intends to relinquish. The authorized officer will also consult with the operator/lessee about proposed LMU stipulations that will supersede, for the duration of the LMU, the Federal lease-specific provisions regarding MLA diligence, the 40-year recoverable coal reserves exhaustion requirement, and Federal rental and royalty payments.

(b) *Availability of LMU proposals.* Applications for the approval of an LMU or LMU modification submitted under § 3477.2 of this title, or a proposal by the authorized officer to establish an LMU, will be available for public inspection in the office of the authorized officer. Information contained in the LMU application that may be withheld from public disclosure under 43 CFR part 2 shall be marked "CONFIDENTIAL INFORMATION" in accordance with § 3400.7 of this title and will not be available for public inspection. A notice of the availability of the application for the proposed LMU or LMU modification will be prepared by the authorized officer, posted at his Office, and mailed to appropriate State and Federal Agencies and to the clerk or other appropriate officer of the county in which the proposed LMU is located. The notice will be posted or published in accordance with the procedures of such offices. The notice will be submitted by the authorized officer to a newspaper of general circulation in the locality of the proposed LMU for publication at least once a week for 2 weeks consecutively. The LMU applicant shall pay the cost of publication.

(c) *Notice of proposed decision.* Prior to the final approval of an LMU, the authorized officer will cause the proposed decision to be published in a newspaper of general circulation in the locality of the proposed LMU at least once a week for 2 weeks consecutively and will not approve the application for at least 30 days after the first publication of the proposed decision. Such notice may be published concurrently with the notice of availability. The LMU applicant shall pay the cost of publication.

(d) *Public participation.* A public hearing will be conducted upon the receipt of a written request for a hearing from any person having a direct interest which is or may be affected adversely by approval of the proposed LMU. The written request shall be received within 30 days after the first publication of the notice of proposed decision in a newspaper of general circulation in the locality of the proposed LMU. A complete transcript of any such public hearing, including any written comments submitted for the record, will be kept and made available to the public during normal business hours at the office of the authorized officer that held the hearing, and will be furnished at cost to any interested party.

§ 3477.2–4 Stipulations.

Prior to the approval of an LMU, the authorized officer will notify the operator/lessee and the surface management agency, if other than the Bureau of Land Management, of stipulations required for the approval of the proposed LMU. The LMU stipulations will provide that:

(a) An R2P2 or R2P2 modification shall be submitted not later than 3 years from the effective date of the most recent Federal coal lease that is subject to MLA diligence prior to LMU approval. The R2P2 shall address the information for the life-of-the-LMU required by subpart 3483 of this title for all Federal and non-Federal lands within the LMU;

(b) No mining operations shall commence within an LMU without an approved mining plan;

(c) If operations are already being conducted under an approved mining plan, operations shall not progress outside the approved mining plan area without approval of a mining plan modification;

(d) The MLA diligence terms and conditions for the LMU will supersede, but not revise or suspend, the Federal lease-specific MLA diligence terms and conditions for the life-of-the-LMU, in accordance with subpart 3485 of this title;

(e) Uniform reporting periods for rental and royalty on Federal leases supersede Federal lease-specific reporting periods. The rental amount for each Federal coal lease is to be prorated to the effective date of the LMU. Thereafter, the rentals for all leases within the LMU will be due in lump sum on each annual anniversary of the effective date of LMU approval. Upon approval and for the duration of the LMU, annual rentals on pre-August 4, 1976, leases may be credited against production royalties for the current year if both of the following conditions are met:

(1) The specific pre-August 4, 1976, lease terms allowed for such credits prior to the effective date of the LMU, and the specific pre-August 4, 1976, lease has not been readjusted or modified; and

(2) The royalty against which the rental credit is applied is due for production from the specific pre-August 4, 1976, lease during a specific LMU diligent development or LMU continued operation year;

(f) The 40-year term for LMU recoverable coal reserves exhaustion begins on the first day of the calendar month following the date that coal is first produced from the LMU on or after the effective date of LMU approval;

(g) Production anywhere within the LMU, of either Federal or non-Federal recoverable coal reserves or a combination thereof, shall be applied toward the satisfaction of the requirements of this group for producing in commercial quantities for the LMU;

(h) The operator/lessees and the LMU shall meet the established requirements of group 3400 of this title; and

(i) The operator/lessees shall comply with any other conditions that the authorized officer requires and that are necessary for the LMU to be developed in an efficient and orderly manner.

§ 3477.3 Approval.

§ 3477.3-1 Criteria for approving the establishment of an LMU.

The authorized officer will, except for good cause, approve an LMU if it meets the criteria of §§ 3477.2–1 and 3477.2–2 of this title and the bonding requirements of subpart 3473 of this title.

§ 3477.3-2 Effective date.

An LMU will become effective on the date specified by the authorized officer. The effective date of the LMU approval will be determined in consultation with the LMU applicant. The effective date for an LMU may be:

(a) The date that the LMU application is received;

(b) The date that it is approved; or

(c) Any date in between.

§ 3477.3-3 Segregations.

(a) If portions of a single Federal lease are to be included in one or more LMU(s), that Federal lease will be segregated into two or more Federal leases. The terms and conditions of the original lease at the time of segregation will apply to each segregated lease.

(b) If only a portion of a Federal lease is to be included in an LMU, the remaining land will be segregated into another Federal lease. The effective date of the segregation will coincide with the LMU effective date, as determined in accordance with § 3477.3–2 of this title.

(c) The applicant may apply to relinquish any portion of a Federal lease segregated under paragraph (a) or (b) of this section in accordance with § 3475.2 of this title, or may assign any portion of such Federal lease in accordance with subpart 3474 of this title.

§ 3477.4 Modification of an LMU.

(a) The boundaries of an LMU may be modified either upon application by the operator/lessees and approval of the authorized officer or by direction of the authorized officer, after consultation with the surface management agency, if other than the Bureau of Land Management.

(b) The authorized officer may adjust the LMU recoverable coal reserves determination in accordance with §§ 3485.3–1(c) and 3485.4–1(f) of this title.

(c) Upon application by the operator/lessees, an LMU may be enlarged by the addition of other Federal leases, Federal recoverable coal reserves, or interests in non-Federal coal deposits. The LMU boundaries may also be enlarged as the result of the enlargement of a Federal lease in the LMU pursuant to subpart 3432 of this title. An LMU may be diminished by creation of one or more separate Federal leases or LMU's, or by the relinquishment of a Federal lease or portion thereof or Federal recoverable coal reserves or portion thereof, pursuant to § 3475.2–1(a) of this title.

(d) In considering an application for the modification of an LMU, the authorized officer may modify the LMU bond, or individual lease bonds, and the LMU stipulations, including the production requirement for commercial quantities.

(e) The dates for submission of an R2P2 and achievement of diligent development will not be changed by any modification of the LMU.

(f) The 40-year mine-out term for an LMU will not be extended because of a modification of an LMU or because of a revision or amendment of the mining plan.

Subpart 3478—Lease Suspensions

§ 3478.1 General.

§ 3478.1-1 Filing requirements.

An application for a lease suspension shall be filed in the Bureau of Land Management State Office having jurisdiction over the lands (subpart 1821 of this title).

§ 3478.1-2 Action on applications.

The authorized officer will review all suspension applications in accordance with this subpart. The operator/lessee will be notified by decision whether the application is approved or rejected. If the application is rejected, the decision will afford the applicant the right of appeal in accordance with 43 CFR part 4.

§ 3478.2 Suspension of operations and production.

§ 3478.2-1 Conditions required for suspension of operations and production.

(a) A suspension of operations and production may:

(1) Be directed by the authorized officer in the interest of conservation; or

(2) Be approved by the authorized officer, if the application filed by the operator/lessee demonstrates that:

(i) Such suspension is in the interest of conservation of either the coal or other natural resources, or both;

(ii) The operator/lessee has received authorization to mine and onsite development of the mine has commenced on the lease(s) or LMU for which the suspension application was filed; and

(iii) The lease or LMU account is in good standing.

(b) An approved suspension does not relieve the operator/lessee from reclamation obligations or from actions necessary to ensure compliance with

health and safety requirements and for mine maintenance, as authorized or directed.

§ 3478.2-2 Effects of suspension of operations and production.

(a) The operator/lessee shall not have beneficial use of any lease or LMU for which a suspension of operations and production has been approved.

(b) As authorized or directed, the operator/lessee may:

(1) Sell or otherwise dispose of coal that was extracted prior to the effective date of the suspension;

(2) Conduct any activities that would be considered casual use; and

(3) Conduct those activities necessary to maintain the mine, including reclamation and activities necessary to ensure public health and safety.

(c) Lease or LMU terms and conditions affected.

(1) The following lease or LMU terms and conditions are suspended for the duration of the suspension period:

(i) Annual rental payment;

(ii) Minimum production and payment of minimum royalty requirements;

(iii) All MLA diligence requirements;

(iv) Section 2(a)(2)(A) of MLA producing-in-commercial-quantities requirement; and

(v) The 40-year mine-out requirement for an LMU.

(2) The following lease or LMU terms and conditions are extended by an amount of time equal to the duration of the suspension:

(i) Lease or LMU year;

(ii) Lease or LMU term;

(iii) Lease readjustment date (for both determinate-term and indeterminate-term leases).

(iv) Diligent development period;

(v) Continued operation year;

(vi) The 3-year period for submission of an R2P2;

(vii) The 40-year LMU mine-out term;

(viii) Section 2(a)(2)(A) of MLA 10-year holding period and 10-year producing-in-commercial-quantities bracket; and

(3) The following lease or LMU terms and conditions are not suspended or extended:

(i) Deferred bonus payments; and

(ii) Royalty payments on any coal sold during the suspension.

§ 3478.2-3 Effective date of suspension of operations and production.

The authorized officer will establish the effective date of the suspension of operations and production on whichever of the following dates occurs first:

(a) The date a complete suspension application is filed in accordance with this subpart; or

(b) The date that all beneficial use of the lease or LMU ceases and the lease or LMU account is in good standing.

§ 3478.2-4 Duration of suspension of operations and production.

(a) A suspension of operations and production shall remain in effect for as long as the conditions that warranted the suspension continue or for a fixed period as determined by the authorized officer.

(b) If a suspension of operations and production is approved for a period exceeding 1 year, the operator/lessee shall provide, 30 days prior to the suspension anniversary date, annual certification that the conditions that warranted the suspension continue to exist.

§ 3478.2-5 Termination of suspension of operations and production.

(a) A suspension of operations and production shall end on the first day of the calendar month during which one of the following first occurs:

(1) Beneficial use of the lease or LMU recommences;

(2) The conditions that warranted the suspension no longer exist;

(3) The operator/lessee does not provide annual certification in accordance with § 3478.2-4(b) of this title that the conditions that warranted the suspension continue to exist; or

(4) The expiration date established by the authorized officer.

(b) Upon the effective date of termination of the suspension, all suspended terms and conditions shall be immediately in full force and effect.

(c) The obligation for payment of rental shall resume on the first day of the month in which the suspension ends.

§ 3478.3 Suspension of operations.

§ 3478.3-1 Conditions required for suspension of operations.

(a) In order to qualify for a suspension of operations, it shall be demonstrated that:

(1) The lease is not subject to MLA diligence or committed to an approved LMU;

(2) Marketing conditions are such that the lease cannot be operated except at a loss;

(3) The operator/lessee has received authorization to mine and onsite development of the mine has commenced on the lease for which the suspension application was filed; and

(4) The lease account is in good standing.

(b) A suspension of operations may be approved upon application by the operator/lessee to the authorized officer if it meets the requirements of this section.

§ 3478.3-2 Effects of suspension of operations.

(a) The operator/lessee shall not have any beneficial use of the lease for which a suspension of operations has been approved.

(b) The operator/lessee may:

(1) Sell or otherwise dispose of coal that was extracted prior to the effective date of the suspension;

(2) Conduct any activities that would be considered casual use; and

(3) Conduct those activities necessary to maintain the mine.

(c) The approval of a suspension of operations suspends only the minimum production and minimum royalty requirements of the lease. All other lease terms and conditions, including the running of the lease term for readjustment purposes, remain in full force and effect. Leases with an approved suspension of operations will be readjusted in accordance with Subpart 3476 of this title.

§ 3478.3-3 Effective date of suspension of operations.

The authorized officer will specify the effective date for a suspension of operations.

§ 3478.3-4 Duration of suspension of operations.

A suspension of operations shall remain in effect for as long as the conditions that warranted the suspension continue, as determined by the authorized officer, or for 6 months, whichever is less.

§ 3478.3-5 Termination of suspension of operations.

(a) A suspension of operations shall terminate at the end of 6 months or on the first day of the calendar month during which one of the following first occurs:

(1) Beneficial use of the lease recommences;

(2) The conditions that warranted the suspension no longer exist;

(3) The expiration date established by the authorized officer; or

(4) The lease becomes subject to MLA diligence.

(b) Upon the effective date of termination of the suspension, all suspended terms and conditions shall be immediately in full force and effect.

(c) The requirement to make minimum royalty payments begins on the first day of the lease month in which the suspension of operations ends.

§ 3478.4 Force majeure suspension.

§ 3478.4–1 Conditions required for force majeure suspension.

(a) An application for a *force majeure* suspension filed by the operator/lessee will be approved by the authorized officer if it meets the requirements of this section.

(b) Suspension criteria. To qualify for a *force majeure* suspension, the operator/lessee shall demonstrate that:

(1) Operations or production under the lease or LMU are or were interrupted by strikes, the elements, or casualties not attributable to the operator/lessee;

(2) The operator/lessee has received authorization to mine and production has commenced from the lease or LMU for which the application for suspension was filed;

(3) The operator/lessee will be prevented from producing in commercial quantities and, therefore, will be prevented from achieving diligent development or maintaining continued operation on the lease or LMU.

§ 3478.4–2 Effects of force majeure suspension.

(a) The operator/lessee shall have beneficial use of any lease or LMU for which a *force majeure* suspension has been approved.

(b) Lease or LMU terms and conditions affected.

(1) The following lease or LMU terms and conditions are suspended for the duration of the suspension period:

(i) Minimum production requirements (leases not subject to MLA diligence);

(ii) Minimum royalty requirements (leases not subject to MLA diligence);

(iii) Lease-specific diligent development and continued operation requirements (only leases not subject to MLA diligence);

(iv) All MLA diligence requirements;

(v) Producing-in-commercial-quantities requirement of section 2(a)(2)(A) of MLA (only leases subject to MLA diligence); and

(vi) The 40-year mine-out requirement for an LMU.

(2) The following lease or LMU terms and conditions are extended by an amount of time equal to the duration of the suspension:

(i) Diligent development period, if production has commenced (only leases subject to MLA diligence, or LMU's);

(ii) Continued operation year;

(iii) The 3-year period for submission of an R2P2;

(iv) The 40-year LMU mine-out term; and

(v) Section 2(a)(2)(A) of MLA 10-year holding period and 10-year producing-in-commercial-quantities bracket (only leases subject to MLA diligence).

(3) The following lease or LMU terms and conditions are not suspended or extended:

(i) Deferred bonus payment;

(ii) Rental;

(iii) Royalty for coal sold during the term of the suspension;

(iv) Beneficial use of the lease or LMU (the operator/lessee is not precluded from producing during a *force majeure* suspension);

(v) Lease term and readjustment date; and

(vi) Section 2(a)(2)(A) of MLA 10-year holding period and 10-year producing-in-commercial-quantities bracket (only leases not subject to MLA diligence).

§ 3478.4–3 Effective date of force majeure suspension.

The authorized officer will establish the effective date of the suspension as either:

(a) The date a complete suspension application is filed with the authorized officer; or

(b) The date that strikes, the elements, or casualties that warranted the suspension occurred.

§ 3478.4–4 Duration of force majeure suspension.

(a) A *force majeure* suspension shall remain in effect for as long as the conditions that warranted the suspension continue or for a fixed period as determined by the authorized officer.

(b) If a *force majeure* suspension is approved for a period exceeding 1 year, the operator/lessee shall provide, 30 days prior to the suspension anniversary date, annual certification that the conditions that warranted the suspension continue to exist.

§ 3478.4–5 Termination of force majeure suspension.

(a) A *force majeure* suspension shall end on the first day of the calendar month during which one of the following first occurs:

(1) The conditions that warranted the suspension no longer exist;

(2) Production reaches the pre-suspension rate;

(3) The operator/lessee does not provide annual certification in accordance with § 3478.4–4(b) of this title that the conditions that warranted the suspension continue to exist; or

(4) The expiration date established by the authorized officer.

(b) Upon the effective date of termination of the suspension, all suspended terms and conditions shall be immediately full force and effect.

(c) For leases subject to MLA diligence, or LMU's, any production that occurs during a *force majeure* suspension is credited toward either diligent development under § 3484.1–2(c) or § 3485.3–2(g) of this title or continued operation under § 3484.2–1(f) or § 3485.4–1(f) of this title, as applicable.

25. Part 3480 is revised to read as follows:

PART 3480—COAL EXPLORATION AND MINING OPERATIONS

Note 1: There are many leases and agreements currently in effect, and which will remain in effect, involving Federal coal leases which specifically refer to the United States Geological Survey, USGS, Minerals Management Service, MMS, or Conservation Division. These leases and agreements also often specifically refer to various officers such as Supervisor, Conservation Manager, Deputy Conservation Manager, Minerals Manager and Deputy Minerals Manager. In addition, many leases and agreements specifically refer to 30 CFR part 211 or specific sections thereof. Those references shall now be read to refer to the appropriate officer, to 43 CFR part 3480, or to the appropriate redesignated section thereof.

PART 3480—COAL EXPLORATION AND MINING OPERATIONS

Subpart 3481—General Provisions

Sec.

Subpart 3482—Exploration Plans

Subpart 3483—Resource Recovery and Protection Plans and Mining Plans

Subpart 3484—Diligence Requirements

Subpart 3485—Logical Mining Unit (LMU) Diligence Requirements

Subpart 3486—Inspection, Production Verification, Orders, and Enforcement

Authority: 30 U.S.C. 181 *et seq.;* 30 U.S.C 351–359; 30 U.S.C. 1201 *et seq.;* 16 U.S.C. 470 *et seq.;* 16 U.S.C. 1531 *et seq.;* 25 U.S.C. 396–399; 43 U.S.C. 1457; 40 U.S.C. 471 *et seq.;* 42 U.S.C. 4321 *et seq.;* 5 U.S.C. 552; 25 U.S.C. 2101 *et seq.;* and 30 U.S.C. 811 and 877.

Subpart 3481—General Provisions

§ 3481.1 General obligations of the operator/lessee.

(a) The operator/lessee shall conduct exploration activities, reclamation, and abandonment of exploration operations for Federal coal pursuant to the established requirements. Exploration conducted without an exploration plan approved in accordance with subpart 3482 of this title shall constitute trespass and shall be subject to the provisions of subpart 9239 of this title.

(b) The operator/lessee shall conduct surface and underground coal mining operations involving development, production, resource recovery and protection, beneficiation and handling of coal, and abandonment of operations in accordance with established requirements. Operations conducted without a mining plan approved in accordance with subpart 3483 of this title shall constitute trespass and shall be subject to the provisions of subpart 9239 of this title.

(c) The operator/lessee shall prevent wasting of coal and other resources during exploration, development, and production, and shall adequately protect the coal and other resources upon abandonment of operations.

(d) The operator/lessee shall immediately report to the authorized officer any conditions or accidents causing severe injury or loss of life that could affect operations conducted under the mining plan, or threatening significant loss of coal or damage to the mine, the lands, or other resources (including, but not limited to, fires, bumps, squeezes, highwall failure, spoil failure, landslides, floods, and gas outbursts), including corrective action initiated or recommended. Within 30 days after such accident, the operator/lessee shall submit a detailed report of damage caused by the accident and of the corrective action taken.

(e) The principal point of contact for the operator/lessee with respect to any requirement of the regulations of this part will be the authorized officer. All reports, plans, or other information required by the regulations of this part shall be submitted to the authorized officer.

(f) The operator/lessee shall provide the authorized officer open access to the Federal lands.

§ 3481.2 Public availability of information.

Information submitted pursuant to Group 3400 of this title that the sender wishes kept confidential shall be marked in accordance with § 3400.7 of this title. Data so marked will be held confidential, and data not so marked will be publicly available, to the extent provided in that section.

§ 3481.3 Recoverable coal reserves.

(a) For all leases subject to diligent development, the recoverable coal reserves will be those determined by the authorized officer to exist as of the date the lease becomes subject to MLA diligence.

(b) For continued operation, the recoverable coal reserves are those determined by the authorized officer to exist as of the date the lease becomes subject to continued operation.

(c) For all logical mining units (LMU's), the recoverable reserves are determined pursuant to §§ 3485.3–1(c) and 3485.4–1(f) of this title.

(d) For purposes of implementing section 2(a)(2)(A) of MLA only, the recoverable coal reserves will be those determined by the authorized officer as of the date of first production from the lease on or after August 4, 1976.

(e) The recoverable coal reserves or LMU recoverable coal reserves determination may only be revised as new information becomes available.

(f) Determinations of recoverable coal reserves or LMU recoverable coal reserves will not be reduced due to any production after the original determination made by the authorized officer, except as provided in § 3481.3(b) and § 3485.4–1(e) of this title.

Subpart 3482—Exploration Plans

§ 3482.1 Submission of exploration plans.

(a) Before conducting any exploration operations on Federal lands pursuant to a lease, exploration license, or license for incidental exploration outside the area of an approved SMCRA permit, the operator/lessee shall submit an exploration plan to and obtain approval from the authorized officer. No exploration plan is required for casual use. Exploration operations within the area of an approved SMCRA permit are governed by the established requirements for the approved SMCRA permit and the data and information collection requirements of § 3483.3(g) of this title.

(b) Only leased Federal coal may be extracted and sold for testing purposes under an approved exploration plan.

(1) If coal is removed and sold for testing purposes, the exploration plan must demonstrate that:

(i) Such testing is necessary for the development of a mining operation;

(ii) A SMCRA permit application is to be submitted in the near future;

(iii) The extraction is solely for the purposes of testing;

(2) An application for an exploration plan for testing purposes shall contain:

(i) The name of the testing firm and the locations at which the coal will be tested;

(ii) If the coal will be sold directly to, or commercially used directly by, the intended end user, or is sold to the intended end user through an agent or broker, a statement shall be included that sets out:

(A) The specific reason for the test, including why the coal may be so different from the intended end user's other coal supplies as to require testing;

(B) The amount of coal necessary for the test and why a lesser amount is not sufficient; and

(C) A description of the specific tests that will be conducted;

(iii) Evidence that sufficient recoverable reserves are available to the operator/lessee for future commercial use to demonstrate that the amount of coal to be removed is not the total of recoverable reserves, but a sampling of larger recoverable reserves; and

(iv) An explanation as to why other means of exploration, such as core drilling, are not adequate to determine the quality of the coal and/or the feasibility of developing a mining operation; and

(3) The royalty provisions of § 3472.2–1 apply to coal extracted under an approved exploration plan. The provisions of § 3472.2–4 do not apply to coal extracted under an approved exploration plan.

(c) The operator/lessee shall submit 3 copies of the exploration plan to the authorized officer. The exploration plan

shall be consistent with and responsive to the requirements of the lease or license for the protection of coal and other resources and for the reclamation of the surface of the lands affected by the operation. The exploration plan shall show that reclamation is an integral part of the proposed operations and that reclamation will progress as contemporaneously as practicable with such operations.

(d) Exploration plans shall contain all of the following:

(1) The name, address, and telephone number of the applicant and, if applicable, the operator/lessee of record;

(2) The name, address, and telephone number of the representative of the applicant who will be present during, and be responsible for conducting, the exploration;

(3) A narrative description of the minimum performance standards for the proposed exploration area, cross-referenced to the map required under § 3482.1(d)(8) of this title, including applicable Federal lease and license serial numbers; surface topography; geologic, surface water, and other physical features; vegetative cover; endangered or threatened species listed pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*; districts, sites, buildings, structures, or objects listed on, or eligible for listing on, the National Register of Historic Places; and known cultural or archaeological resources located within the proposed exploration area;

(4) A narrative description of the methods to be used to conduct coal exploration, reclamation, and abandonment of operations including, but not limited to:

(i) The types, sizes, numbers, capacity, and uses of equipment for drilling and blasting, and road or other access-route construction;

(ii) Excavated earth- or debris-disposal activities;

(iii) The proposed method for plugging drill holes;

(iv) Estimated size and depth of drill holes, trenches, and test pits; and

(v) Plans for transfer and modification of exploration drill holes to be used as surveillance, monitoring, or water wells.

(5) An estimated timetable for conducting and completing each phase of the exploration, drilling, reclamation, and abandonment.

(6) For trenching, excavating, or other methods that remove more than minor amounts of coal, the estimated amounts of coal to be removed during exploration, a description of the methods to be used to determine those amounts, and the proposed use of the coal removed.

(7) A description of the measures to be used to comply with the performance standards for exploration (§ 3482.5 of this title).

(8) A map tied to the relevant public-land survey or other survey acceptable to the authorized officer at a scale of 1:24,000 or larger showing the areas of land to be affected by the proposed exploration and reclamation. The map shall show: existing roads, occupied dwellings, and pipelines; proposed location of trenches, roads, and other access routes and structures to be constructed; applicable lease and license boundaries; the location of land excavations to be conducted; coal exploratory holes to be drilled or altered; earth- and/or debris-disposal areas; existing bodies of surface water; and topographic and drainage features.

(9) Name and address of the owner of record of the surface land, if other than the United States. If the surface is owned by a person other than the applicant or if the Federal coal is leased to a person other than the applicant, a description of the basis upon which the applicant claims the right to that land for the purposes of conducting exploration and reclamation.

(10) The lease or license number and, if applicable, the SMCRA permit number.

(11) For operations under an exploration license, the names and addresses of all participants in the exploration plan as well as the extent of their participation.

(12) Such other data as may be required by the authorized officer.

§ 3482.2 Action on exploration plans.

The authorized officer, after evaluating a proposed exploration plan and all comments received thereon, will approve or disapprove in writing the exploration plan.

(a) In order to approve an exploration plan, the authorized officer will determine that the exploration plan complies with the established requirements. Reclamation shall be accomplished as set forth in the exploration plan. The authorized officer may impose additional conditions to conform the exploration plan to the established requirements. When the land involved in the exploration plan is under the surface management jurisdiction of a Federal Agency other than the Bureau of Land Management, that other Federal Agency shall concur with the approval terms of the exploration plan.

(b) In disapproving an exploration plan, the authorized officer will state what modifications, if any, are necessary to achieve conformity with the established requirements. No exploration plan will be approved unless the bond is adequate (Subpart 3473 of this title).

(c) No exploration plan will be approved for any applicant that has outstanding violations pursuant to 30 CFR 773.15(b)

§ 3482.3 Modification of exploration plans.

(a) *Changes in plans required by authorized officer.* (1) The authorized officer, after consultation, as necessary, with the operator/lessee and the Federal surface management agency if other than the Bureau of Land Management, may require that an approved exploration plan be revised in order to adjust to changed conditions, to correct oversights, or to reflect changes in legal requirements.

(2) The authorized officer may require modification of the original exploration plan under an exploration license to accommodate the legitimate exploration needs of persons seeking to participate and to avoid duplication of exploration activities in the same area.

(b) *Changes in plans by operator/lessee.* The operator/lessee may propose modifications to an approved exploration plan and shall submit a written statement of the proposed change and its justification to the authorized officer. The authorized officer will approve or disapprove in writing any such modifications, after consultation, as necessary, with the Federal surface management agency if other than the Bureau of Land Management, or specify conditions under which they would be acceptable.

§ 3482.4 Collection and submission of data.

(a) The operator/lessee shall only collect data in accordance with an approved exploration plan.

(b) All data submitted pursuant to this section that the sender wishes kept confidential shall be marked in accordance with § 3400.7 of this title. Data so marked will be treated in accordance with that section. No data submitted pursuant to a license for incidental exploration may be kept confidential.

(c) Reports. (1) *Exploration reports.* The operator/lessee shall file with the authorized officer the data obtained pursuant to the exploration. Data (including, but not limited to, geologic, geophysical, and core-drilling analyses) shall be submitted within 90 days after the date the drill rig moves off the last

hole drilled under the approved exploration plan.

(2) *Exploration report content.* The exploration report shall contain the following information:

(i) Location(s) and serial number(s) of the federally leased or licensed lands.

(ii) Nature of exploration operations.

(iii) Number of holes drilled and/or other work performed during the year or other report period, as determined by the authorized officer.

(iv) Total footage drilled during the year or other report period.

(v) Map at a scale consistent with § 3482.1(d)(8) of this title, showing the surveyed location and elevations of all holes drilled, other excavations, the coal outcrop lines, and all geophysical, drillers', lithological and other geologic logs with appropriate designation and accurate location descriptions.

(vi) Copies of coal analyses and other pertinent tests that are obtained from exploration operations during the year.

(vii) Copies of all in-hole mechanical or geophysical stratigraphic surveys or logs, such as electric logs, gamma-ray/neutron logs, or sonic logs, or any other logs. The records shall include a log of all strata penetrated and conditions encountered such as water, quicksand, gas, or any unusual conditions.

(viii) Status of reclamation of the exploration operations.

(ix) A statement of availability and location of all drill-hole logs and representative drill cores retained by the operator/lessee pursuant to § 3482.5(e) of this title.

(x) Any other information requested by the authorized officer.

(3) *Submission of reserves estimates.* Any estimates of coal reserve base, minable reserve base, or recoverable coal reserves that are generated as a result of exploration shall be submitted to the authorized officer within 120 days after completion of exploration operations.

§ 3482.5 Performance standards for exploration.

(a) The operator/lessee shall comply with the established requirements.

(b) The operator/lessee, if required by the authorized officer, shall set and cement casing in the hole and install suitable blowout-prevention equipment when drilling on lands valuable or prospectively valuable for oil, gas, or geothermal resources, or as otherwise directed by the authorized officer.

(c) All exploration drill holes shall be plugged with cement from the bottom to the top of the hole unless a lesser cap or plug is approved by the authorized officer.

(d) Exploration activities shall be managed to prevent water pollution and mixing of ground and surface waters and to ensure the safety of people, livestock, and wildlife.

(e) The operator/lessee shall retain for 1 year, unless a shorter time period is authorized by the authorized officer, all drill and geophysical logs, and shall make such logs available for inspection or analysis if requested. The authorized officer may require the operator/lessee to retain representative samples of drill cores for 5 years. Confidentiality of such information will be accorded pursuant to the provisions at § 3400.7 of this title.

(f) The operator/lessee may utilize exploration drill holes as surveillance wells for the purpose of monitoring the effects of subsequent operations on the quantity, quality, or pressure of ground water or mine gases only with the written approval of the authorized officer, in consultation with the regulatory authority. The operator/lessee may convert exploration drill holes to water wells only after approval of the operator/lessee's written request by the authorized officer and the surface owner, in consultation with the regulatory authority. All such approvals will be accompanied by a corresponding transfer of responsibility for any liability including eventual plugging, reclamation, and abandonment. Nothing in this paragraph shall supersede or affect the applicability of any State law requirements for such a transfer, conversion, or utilization as a supply for domestic consumption.

(g) Habitats of unique or unusually high value for fish, wildlife, and other related environmental values and critical habitats of threatened or endangered species identified pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) shall not be disturbed during exploration.

(h) All roads or other transportation facilities used for exploration shall comply with the established requirements.

(i) Excavations, artificially flat areas, or embankments created during exploration shall be returned to the approximate original contour when such features are no longer required.

(j) Topsoil shall be separately removed, stored, and redistributed on areas disturbed by exploration activities as detailed in the exploration plan.

(k) All areas disturbed by exploration activities shall be revegetated in a manner that encourages prompt revegetation and recovery of a diverse, effective, and permanent vegetative cover. Revegetation shall be accomplished in accordance with the following:

(1) All areas disturbed by exploration activities shall be seeded or planted to the same seasonal variety adapted to the areas disturbed. If the land use of the exploration area is agricultural, planting of the crops normally grown will meet the requirements of this section.

(2) The vegetative cover shall be capable of stabilizing the soil surface from erosion.

(l) Overland flows and ephemeral, perennial, or intermittent streams shall be diverted only as approved in the exploration plan.

(m) Each exploration hole, borehole, well, or other exposed underground opening created during exploration shall be reclaimed in accordance with the approved exploration plan.

(n) All facilities and equipment shall be promptly removed from the exploration area when they are no longer needed for exploration. The authorized officer may allow facilities and equipment to remain to:

(1) Provide additional environmental data;

(2) Reduce or control the onsite and offsite effects of exploration activities; or

(3) Facilitate future surface mining and reclamation operations by the operator/lessee.

(o) Exploration shall be conducted in accordance with the approved exploration plan in a manner which minimizes disturbance of the hydrologic balance.

(p) Acid- or toxic-forming materials shall be handled in accordance with the approved exploration plan.

(q) The authorized officer may specify additional measures which shall be adopted by the operator/lessee.

§ 3482.6 Completion of exploration operations and permanent abandonment.

(a) Before permanent abandonment of exploration operations, all openings and excavations shall be closed, backfilled, or otherwise permanently dealt with in accordance with sound engineering practices and according to the approved exploration plan.

(b) Drill holes, trenches, and other excavations for exploration shall be abandoned in such a manner as to protect the surface and not endanger any present or future underground operation, or any deposit of coal, oil, gas, mineral resources, or ground water.

(c) Areas disturbed by exploration operations shall be graded, drained, and revegetated.

Subpart 3483—Resource Recovery and Protection Plans and Mining Plans

§ 3483.1 Resource recovery and protection plan (R2P2).

(a) The operator/lessee shall submit the R2P2 for a lease or LMU, addressing the requirements of § 3483.3 of this title, to the authorized officer not later than 3 years after the lease becomes subject to MLA diligence. For LMU's, see § 3485.2(a) of this title.

(b) If the operator/lessee files its SMCRA permit application package subsequent to the submission of the R2P2, the operator/lessee shall supplement the R2P2 to be consistent with the mining plan requirements of this subpart.

(c) The requirement of section 7(c) of MLA for submission of an R2P2 is satisfied if a mining plan for the lease(s) or LMU is already approved, or has been filed and is pending decision.

§ 3483.2 Mining plans.

§ 3483.2-1 Mining plan submission.

(a) No person shall conduct coal operations on lands containing leased Federal coal without an approved mining plan.

(b) The mining plan shall meet the requirements of § 3483.3 of this title.

(c) The operator/lessee shall include a complete, separate, stand-alone mining plan as part of the SMCRA permit application package submitted to the regulatory authority, which will provide a copy to the authorized officer. Any data and information associated solely with the mining plan, which the operator/lessee wishes to be treated as confidential, shall be so marked and shall be submitted directly to the authorized officer. Data and information that are so marked will be treated in accordance with § 3400.7 of this title.

(d) Coal operations on lands containing leased Federal coal shall be conducted only in accordance with the established requirements.

§ 3483.2-2 Action on mining plans.

(a) *General.* The Secretary is responsible for approving, disapproving, approving upon condition(s), or requiring modification of mining plans pursuant to MLA and group 3400 of this title.

(b) *Decision on Mining Plan.* The decision on the mining plan will be based on the established requirements, including a determination that MER of the recoverable coal reserves will be achieved for the life of the lease.

(c) *Term of approval.* An approved mining plan shall remain in effect until modified or canceled by the authorized officer or withdrawn by the operator/lessee, and shall be binding on any person conducting operations under the approved mining plan.

§ 3483.2-3 Modification of approved mining plans.

(a) *Minor vs. major modifications.* (1) Minor modifications to a mining plan may be approved by the authorized officer. A minor modification is any change that does not extend mining beyond the approved mining plan area.

(2) Any change in a mining plan that would extend coal mining operations onto leased Federal coal lands for the first time, or extend beyond the approved mining plan area, is a major modification.

(b) *Modifications by the authorized officer.* The authorized officer may require approved mining plans to be reasonably modified, after consultation with the operator/lessee and the regulatory authority as necessary, to adjust to changed conditions, to correct oversights, to reflect changes in legal requirements, or to direct data collection and the siting of exploration operations. Such revisions will be made in writing and incorporated into the lease record.

(c) *Modifications by the operator/lessee.* The operator/lessee may propose modifications to an approved mining plan for any requirements under MLA, and shall submit a written statement of the proposed change and its justification to the authorized officer. The authorized officer will approve or disapprove in writing any such modifications, after consultation with the regulatory authority as necessary, or specify conditions under which they would be acceptable.

§ 3483.3 R2P2 and mining plan requirements.

The R2P2 shall address, and the mining plan shall contain, all established requirements over the life-of-the-lease or life-of-the-LMU, if applicable, including the following:

(a) Names, addresses, and telephone numbers of persons responsible for operations to be conducted under the approved plan to whom notices and orders are to be delivered; names and addresses of operator/lessees; lease serial numbers; and names and addresses of all surface and all mineral owners of record, if other than the United States;

(b) A general description of geologic conditions and mineral resources, with appropriate maps, within the area where operations are to be conducted;

(c) A description of the proposed operation, including:

(1) Sufficient coal analyses to determine the quality of the minable reserve base in terms including, but not limited to, Btu content on an as-received basis, ash, moisture, sulphur, volatile matter, and fixed carbon content, and any other elements or compounds which can affect marketability and MER;

(2) The methods of operations and/or variation of methods, basic equipment and mining factors including, but not limited to, mining sequence, production rate, estimated recovery factors, stripping ratios, highwall limits, number of acres to be affected, a description of how Federal coal will be measured and allocated for royalty purposes, and for explorations the scope, content, and location of data collection activities;

(3) An estimate of the coal reserve base, minable reserve base, and recoverable coal reserves for each lease included in the plan. If the plan covers an LMU, recoverable coal reserves shall also be reported for the non-Federal lands included in the plan; and

(4) The method of abandonment of operations proposed to protect the unmined coal and other resources;

(d) Maps and cross-sections, tied to the relevant public-land survey or other survey acceptable to the authorized officer, as follows:

(1) A plan map of the area to be mined showing—

(i) Federal lease boundaries and serial numbers;

(ii) LMU boundaries, if applicable;

(iii) SMCRA permit application boundaries;

(iv) Surface improvements, and surface ownership and boundaries;

(v) Coal outcrop and subcrop dips and strikes; and

(vi) Siting of exploration operations; and

(vii) Locations of existing and abandoned surface and underground mines;

(2) Isopach maps of each coal bed to be mined and the associated overburden and interburden;

(3) Typical structure cross-sections showing all coal contained in the coal reserve base;

(4) General layout of proposed surface or strip mine showing—

(i) Planned sequence of mining by year for the first 5 years, thereafter in 5-year increments for the entire lease or, if applicable, LMU;

(ii) Location and width of coal fenders; and

(iii) Cross-sections of typical pits showing highwall and spoil configuration, fenders, if any, and coal beds;

(5) General layout of proposed underground mine showing—

(i) Planned sequence of mining by year for the first 5 years, thereafter in 5-year increments for the entire lease or, if applicable, LMU;

(ii) Location of shafts, slopes, main development entries and barrier pillars, panel development, gate roads, bleeder entries, and permanent barrier pillars;

(iii) Location of areas where pillars will be left and an explanation why these pillars will not be mined;

(iv) A sketch of a typical entry system for main development, panel development entries, and gate roads showing centerline distances between entries and crosscuts; and

(v) A sketch of typical panel recovery (e.g., room and pillar, longwall, or other mining method) showing, by number, the sequence of development and retreat; and

(6) For auger mining—

(i) A plan map showing the area to be auger mined and location of pillars to be left to allow access to deeper coal; and

(ii) A sketch showing details of operations including coal-bed thickness, auger-hole spacing, diameter of holes and depth or length of auger holes;

(e) A general reclamation schedule for the entire lease or, if applicable, LMU. This should not be construed as meaning duplication of a SMCRA permit application in a SMCRA permit application package;

(f) Any required data that are clearly duplicated in documents previously submitted to the regulatory authority or Mine Safety and Health Administration may be used to fulfill the requirements of this section provided that a cross-reference is clearly stated. However, all data and information that the operator/lessee obtains pursuant to exploration operations within the area of an approved SMCRA permit shall be submitted to the authorized officer. A copy of the relevant portion of such submissions shall be included in the plan;

(g)(1) *Submission of data.* (i) Data (including, but not limited to, geologic, geophysical, and core-drilling analyses) shall be submitted to the authorized officer within 90 days after the end of each calendar year and promptly upon completion or temporary cessation of exploration operations within the area of an approved SMCRA permit, and at such other times as the authorized officer may request. Drilling data shall be submitted within 90 days of the date the drill rig moves off the last hole drilled.

(ii) All data and information submitted pursuant to § 3483.3(g) that the sender wishes kept confidential shall be marked in accordance with § 3400.7 of this title. Data so marked will be treated in accordance with § 3483.3(g).

(2) *Reports.* (i) The operator/lessee shall file a report with the authorized officer addressing the date and information obtained pursuant to exploration within the area of an approved SMCRA permit, in accordance with § 3483.3(g).

(ii) The report shall contain the data and information detailed at § 3482.4(c)(2) and (3) of this title, exclusive of §§ 3482.4(c)(2) (viii) and (x) of this title;

(h) An explanation of how maximum economic recovery (MER) of the Federal coal will be achieved for the leases included in the plan. If a coal bed, or portion thereof, is not to be mined or is to be rendered unminable by the operation, the operator/lessee shall submit appropriate justification to the authorized officer for approval; and

(i) Any other information that the authorized officer may request.

§ 3483.4 Operations or progress maps.

(a) *General requirements.* Upon commencement of mining operations, the operator/lessee shall maintain accurate and up-to-date maps of the mine, drawn to scales acceptable to the authorized officer. Certified copies of such maps shall be properly posted to date and furnished to the authorized officer annually, or at such other times as the authorized officer may request. Copies of any maps, normally submitted to the regulatory authority, Mine Safety and Health Administration, or other State or Federal Agencies, that show the specific data required by §§ 3483.4 (b), (c), and (d) of this title will be acceptable in fulfilling these requirements. The maps shall show:

(1) The name of the mine;

(2) Name of the operator/lessee;

(3) Lease serial number(s);

(4) SMCRA permit number;

(5) Lease and SMCRA permit boundary lines;

(6) Surface buildings;

(7) Dip of the coal bed(s);

(8) True north;

(9) Map scale;

(10) Map explanation;

(11) Location, diameter, and depth of auger holes;

(12) Improvements;

(13) Topography, including subsidence resulting from mining;

(14) Geologic conditions as determined from outcrops, drill holes, exploration, or mining;

(15) Any unusual geologic or other occurrences such as dikes, faults, splits, or unusual water occurrences, or other conditions that may influence MER; and

(16) Any other information that the authorized officer may request.

(b) *Underground mine maps.* (1) Underground mine maps, in addition to the general requirements of § 3483.4(a) of this title, shall show:

(i) All mine workings;

(ii) The date of extension of the mine workings;

(iii) An illustrative coal section at the face of each working unit;

(iv) Location of all surface and main fan locations and, where applicable, up-to-date fan data;

(v) Existing and proposed ventilation system including intakes, returns, bleeders, stoppings, doors, overcasts, undercasts, and regulators;

(vi) Direction of the ventilating current in the various parts of the mine at the time of making the latest surveys;

(vii) Sealed areas;

(viii) Known bodies of standing water either in, above, or below the active workings of the mine;

(ix) Areas affected by squeezes;

(x) Elevations of surface and underground levels of all shafts, slopes, or drifts, and elevation of the floor, bottom of the mine workings, or mine survey stations in the roof at regular intervals in main entries, panels, or sections; and

(xi) Sump areas.

(2) Abandonment maps shall be submitted before a mine or a section of a mine is abandoned, closed, or made inaccessible. A survey of the mine or section shall be made by the operator/lessee and recorded on production maps. Any maps submitted to the regulatory authority to be used to monitor subsidence shall also be submitted to the authorized officer.

(c) *Surface mine maps.* Surface mine maps, in addition to the general requirements of § 3483.4(a) of this title, shall include the date of extension of the mine workings and a detailed stratigraphic section at intervals specified in the approved mining plan. Such maps shall show:

(1) Areas of disturbance;

(2) Areas from which coal has been removed;

(3) The highwall;

(4) Fenders;

(5) Uncovered but unmined coal beds;

(6) Elevation of the top of the coal beds;

(7) Coal bed thickness;

(8) Tonnage removed; and

(9) Tonnage uncovered.

(d) *Vertical projections and cross-sections of mine workings.* When required by the authorized officer, vertical projections and cross-sections shall accompany plan views.

(e) *Accuracy of maps.* The accuracy of maps furnished shall meet standards

acceptable to the authorized officer and shall be certified by a professional engineer, professional land surveyor, or other such professionally qualified person.

(f) *Liability of operator/lessee for expense of survey.* If the operator/lessee does not furnish a required or requested map within a reasonable time or submits an incorrect map, the authorized officer, if necessary, will employ a professionally qualified person to make the required survey and map at the expense of the operator/lessee.

§ 3483.5 General performance standards.

(a) *General.*—(1) *Licenses to mine.* All coal mined by holders of licenses to mine shall be reported on a semiannual basis on Bureau of Land Management Form 3440–1.

(2) *Maximum economic recovery (MER).* Upon approval of a mining plan for leases subject to MLA diligence, the operator/lessee shall conduct operations to achieve MER of the Federal coal. Additional information may be requested from the operator/lessee to aid in the MER determination. Leases not yet subject to MLA diligence shall comply with MIA regarding conservation of the coal and other resources.

(3) *Unexpected wells.* The operator/lessee shall notify the authorized officer promptly if operations encounter unexpected wells or drill holes that could adversely affect the recovery of coal during mining operations, and shall take no further action that would disturb such wells or drill holes without the approval of the authorized officer.

(4) *Conservation of resources.* The operator/lessee shall conduct operations in a manner to achieve resource recovery and protection, as defined in § 3400.0–5 of this title.

(5) *Exposed coal-bed, slack-coal, or combustible-waste fires.* If a coal bed exposed by surface mining or an accumulation of slack coal or combustible waste becomes ignited, the operator/lessee shall immediately take all steps necessary to extinguish the fire and protect the remaining coal.

(b) *Standards for underground mines.*—(1) *Conservation of underground resources.* No entry, room, or panel workings in which the pillars have not been completely mined within safe limits shall be permanently abandoned or rendered inaccessible, except with the prior written approval of the authorized officer.

(2) *Subsidence.* The operator/lessee shall adopt mining methods that ensure proper mining of recoverable coal reserves under MLA, as determined by the authorized officer. Operator/lessees of underground coal mines shall adopt measures consistent with known technology in order to prevent or control subsidence where required.

(3) *Top and bottom coal.* Top and bottom coal may be left in underground mines only after taking into consideration safety factors, available equipment, overall coal-bed thickness and MER.

(4) *Multiple coal bed mining.* (i) In general, the recoverable coal reserves in the upper coal beds shall be mined before the lower coal beds; simultaneous workings in each upper coal bed shall be kept in advance of the workings in each lower coal bed. The authorized officer may approve the mining of lower coal beds before mining the upper coal bed(s) only after a technical justification, submitted by the operator/lessee, shows that recovery of all coal bed(s) will not be adversely affected.

(ii) In areas subject to multiple coal-bed mining, the protective barrier pillars for all main and secondary development entries, main haulageways, primary aircourses, bleeder entries, and manways in each coal bed shall be superimposed regardless of vertical separation or rock competency; however, modifications and exceptions to, or variations from, this requirement may be approved by the authorized officer in advance.

(5) *Barrier pillars left for support.* (i) The operator/lessee shall not, without prior consent of the authorized officer, mine any coal or drive any underground workings within 50 feet of any of the outside boundary lines of the federally leased land, or within such greater distance of said boundary lines as the authorized officer may prescribe with consideration for State or Federal environmental or safety laws. The operator/lessee will be required to pay for unauthorized mining of such barrier pillars. The authorized officer may require that payment be up to, and include, the full value of the recoverable coal reserves mined from the pillars. The drilling of any lateral holes within 50 feet of any outside boundary shall be done in consultation with the authorized officer.

(ii) If the coal in adjoining premises has been worked out, an agreement shall be made with the coal owner prior to the mining of the coal remaining in the Federal barrier pillars that otherwise may be lost. If the water level beyond the pillar is below the operator/lessees adjacent operations, and all the safety factors have been considered, the operator/lessee, on the written order of the authorized officer, shall mine out and remove all available Federal recoverable coal reserves in such barrier if it can be mined: without undue hardship to the operator/lessee; with due consideration for safety; and pursuant to the established requirements. Either the operator/lessee or the authorized officer may initiate the proposal to mine coal in a barrier pillar.

(c) *Standards for surface mines.* (1) Pit widths for each coal bed shall be engineered and designed so as to eliminate or minimize the amount of coal fender to be left as a permanent pillar on the spoil side of the pit.

(2) The amount of bottom or rider coal beds wasted in each pit shall be minimized consistent with individual mine economics and the coal-quality standards required to be maintained by the operation.

(3) The operator/lessee shall, in the interest of conservation of coal and other resources, mine coal up to the Federal lease boundary line, provided that: the mining is in compliance with the established requirements; the mining does not conflict with existing surface rights; and the mining is carried out without undue hardship to the operator/lessee and with due consideration for safety.

(d) *Standards for auger mines.* (1) If auger mining is proposed, the authorized officer will take into account the recovery factor and the probable effect on producing the remaining adjacent recoverable coal reserves by underground mining. If underground mining from the highwall or outcrop is contemplated in the foreseeable future, auger mining may not be approved if underground mining would ensure greater recovery of the unmined recoverable coal reserves. Where auger mining is approved, the authorized officer will specify the size, location, and number of pillars or blocks of coal that will remain along the highwall or outcrop to ensure access to the unmined recoverable coal reserves.

(2) Auger mining shall comply with the established requirements.

§ 3483.6 Abandonment of operations.

(a) The authorized officer will approve the conditions under which exploration operations, a surface or underground mine, or portions thereof, will be temporarily abandoned pursuant to the regulations of this part.

(b) Upon permanent abandonment of operations:

(1) The authorized officer will require that the unmined coal and other resources be adequately protected;

(2) The authorized officer will inform the regulatory authority and the surface management agency, if other than the

Bureau of Land Management, when the abandonment has been completed in compliance with the regulations of this part; and

(3) Abandonment of mining operations on a lease shall not preclude the regulatory authority from requiring the operator/lessee to comply with reclamation requirements.

Subpart 3484—Diligence Requirements

§ 3484.1 Diligent development.

§ 3484.1–1 Diligent development requirements.

(a) *Leases not yet subject to MLA diligence.* Federal coal leases shall be subject to the diligence requirements of the lease-specific terms, including those that describe the minimum production and minimum royalty requirements, until the lease becomes subject to MLA diligence.

(b) *Leases subject to MLA diligence.* (1) A lease becomes subject to MLA diligence in one of four ways: (i) Lease issuance after August 4, 1976; (ii) Lease readjustment after August 4, 1976; (iii) Lease modification after August 4, 1976; (iv) Voluntary acceptance of MLA diligence requirements by the operator/lessee.

(2) Each lease subject to MLA diligence shall achieve diligent development.

(3) A lease shall terminate pursuant to authority of law at the end of the diligent development period for failure to achieve diligent development.

(4) If the recoverable coal reserves determination made pursuant to § 3481.3(a) of this title is revised pursuant to § 3481.3(e) of this title, commercial quantities for diligent development will also be revised, effective immediately.

§ 3484.1–2 Diligent development production credits.

(a) All production from a lease that occurs after the lease becomes subject to MLA diligence shall be credited toward diligent development until the lease becomes subject to continued operation.

(b) For leases issued prior to August 4, 1976, that become subject to MLA diligence after August 4, 1976, the lessee may request to have all production occurring between August 4, 1976, and the date that the lease became subject to MLA diligence credited toward diligent development. Any request to credit production shall be submitted to the authorized officer and shall contain a certified report of annual production that the lessee wishes to be credited toward diligent development.

(c) For leases subject to diligent development, any production that occurs during a *force majeure* suspension is credited toward diligent development, effective on the first day of the royalty reporting period following termination or expiration of the suspension.

§ 3484.2 Continued operation.

§ 3484.2–1 Continued operation requirements.

(a) Continued operation as described in this subpart applies only to those leases subject to MLA diligence.

(b) After coal is produced in commercial quantities for diligent development, the lease will become subject to continued operation in 1 of 2 ways:

(1) By election during the diligent development period. Such election may only be filed during the diligent development period; or

(2) At the end of the diligent development period.

(c) A lease that is subject to continued operation shall maintain continued operation until the recoverable reserves are depleted.

(d) The condition of continued operation may be satisfied either by annual production of commercial quantities, by the payment of advance royalty as provided at § 3484.2–3 of this title, or by a combination of both.

(e) Any lease for which the continued operation requirement is not maintained shall be subject to cancellation.

(f) For leases subject to continued operation, any production that occurs during a *force majeure* suspension is credited toward continued operation, effective on the first day of the royalty reporting period following termination or expiration of the suspension.

(g) If the recoverable coal reserves determination made pursuant to § 3481.3(a) of this title is revised pursuant to § 3481.3(e) of this title, the commercial quantities for continued operation will also be revised, effective at the beginning of the following continued operation year. After a lease is subject to continued operation, regardless of any increase in the recoverable coal reserves, the lease shall remain subject to continued operation.

(h) Once a lease is subject to continued operation, by election or otherwise, that lease shall not again be subject to diligent development.

§ 3484.2–2 Continued operation election.

(a) Election requests will not be approved for a lease that has not achieved diligent development.

(b) The operator/lessee may elect for the lease to be subject to continued operation upon written request to the authorized officer.

(c) When the election application is approved, the first continued operation year shall begin on the first day of the calendar month following the filing of the election.

§ 3484.2–3 Payment of advance royalty in lieu of continued operation.

(a) The authorized officer may accept payment of advance royalty only in lieu of continued operation. Failure to maintain continued operation on a lease, or to pay advance royalty in lieu thereof, will subject the lease to cancellation.

(b) For advance royalty purposes, the value of the Federal coal will be calculated in accordance with 30 CFR part 206. When advance royalty is accepted in lieu of continued operation, it shall be paid at the highest production royalty rate specified in the lease, based on the production of commercial quantities. (See 30 CFR 218.200 regarding payment of royalties.)

(c) For leases, advance royalty will be determined using the following formula:

$$ARD = (COYR - COYP) \times ARR \times UV$$

Where:

ARD = Advance Royalty Due

COYR = Continued Operation Year Production Requirement (i.e., commercial quantities of lease recoverable coal reserves)

COYP = Total Lease Production Achieved During the Continued Operation Year

ARR = Advance Royalty Rate for the Lease (i.e., lease-specific royalty rate)

UV = Unit Value (determined in accordance with 30 CFR Part 206)

(1) If the term "(COYR − COYP)" is less than or equal to zero, the continued operation requirement has been met through production and no advance royalty is owed for that continued operation year.

(2) If the term "(COYR − COYP)" is greater than zero and less then COYR, advance royalty is owed on that tonnage required to supplement the production (COYP) in order to meet the continued operation requirement.

(3) If the term "(COYR − COYP)" is equal to COYR, advance royalty is owed on that tonnage (COYR) required to supplement the production (COYP) in order to meet the continued operation requirement.

(d) For nonproducing leases, the operator/lessee may request to pay advance royalty at any time during the continued operation year. If the advance royalty is paid not later than 30 days after the beginning of the continued operation year for which it is due, no late payment charge will be required.

For any lease that fails to meet continued operation and for which advance royalty has not been paid during a continued operation year, advance royalty shall be paid not later than 30 days after the end of that continued operation year. Advance royalty that is paid late shall be subject to a late payment charge calculated in accordance with 30 CFR § 218.200. Failure of the operator/lessee to comply with the provisions of 30 CFR § 218.200 shall subject the lease to cancellation.

(e) Advance royalty paid in lieu of continued operation production may be used to offset the royalty owed on future production. However, the advance royalty balance may not be reduced below zero. Late-payment charges shall not be used to offset future production royalty or advance royalty.

(f) No advance royalty is due when less than commercial quantities remains on a lease.

(g) Limitations on crediting advance royalty toward production royalty:

(1) The aggregate number of years that advance royalty may be paid in lieu of continued operation shall not exceed 10 during either the initial 20-year term or any subsequent 10-year readjustment period. If an operator/lessee meets the requirement for continued operation in any continued operation year in which the operator/lessee has paid advance royalty, such year will not be considered when calculating the maximum number of years for which advance royalty may be accepted;

(2) No advance royalty paid during the initial 20-year term of a lease shall be used to reduce a production royalty pursuant to § 3484.2–3(e) of this title after the 20th year; and

(3) No advance royalty paid during any 10-year readjustment period of a lease shall be used to reduce a production royalty pursuant to § 3484.2–3(e) of this title after the end of the 10-year readjustment period in which the advance royalty is paid.

Subpart 3485—Logical Mining Unit (LMU) Diligence Requirements

§ 3485.1 MLA diligence for LMU's.

The regulations of Group 3400 of this title apply to all LMU's, except where Subpart 3477 or Subpart 3485 of this title specifically provides otherwise. Logical mining units (LMU's) shall be subject to MLA diligence.

(a) For LMU's, MLA diligence is based on and controlled by the leases contained in the LMU. MLA diligence begins on the most recent effective date that any such lease became subject to lease-specific MLA diligence prior to the effective date of LMU approval (for LMU's, the term "most recent lease" is used to describe this lease). If the LMU contains at least one lease that is not yet subject to MLA diligence prior to LMU approval, MLA diligence begins on the effective date of LMU approval.

(b) For LMU's, MLA diligence supersedes, but does not suspend, lease-specific MLA diligence for the life-of-the-LMU.

(c) Upon termination, cancellation, or expiration of an LMU, lease-specific MLA diligence applies individually to the leases that were contained in the LMU, as if the LMU had not been formed.

(d) The 40-year term for LMU recoverable coal reserves exhaustion begins on the date that coal (Federal or non-Federal) is first produced on or after the effective date of LMU approval.

§ 3485.2 Resource recovery and protection plans (R2P2's) and mining plans.

(a) An R2P2, or R2P2 modification, shall be submitted not later than 3 years from the "most recent lease" or from the effective date of LMU approval, whichever occurs first (§ 3485.1(a) of this title). The R2P2 shall address the information for the life-of-the-LMU required by § 3483.3 of this title for all Federal and non-Federal lands within the LMU.

(b) No person shall conduct coal mining operations on lands within an LMU without an approved mining plan. The mining plan shall contain the information for the life-of-the-LMU required by § 3483.2 of this title for all Federal and non-Federal lands within the LMU.

(c) If mining operations are already being conducted under an approved mining plan on the effective date of LMU approval, mining operations may not progress outside the approved mining plan area without approval of a mining plan modification. The mining plan modification shall contain the information for the life-of-the-LMU required by § 3483.2 of this title for all Federal and non-Federal lands within the LMU.

§ 3485.3 LMU diligent development.

§ 3485.3–1 LMU diligent development requirements.

(a) Each LMU shall achieve diligent development.

(b) An LMU shall terminate pursuant to authority of law for failure to achieve diligent development prior to the end of the LMU diligent development period.

(c) If there are no diligent development production credits requested pursuant to § 3485.3–2 of this title, the Federal portion of the LMU recoverable coal reserves will be those lease-specific reserves remaining as of the effective date of LMU approval. The non-Federal portion, if any, of the LMU recoverable coal reserves will be those non-Federal reserves remaining as of the effective date of LMU approval. If there are diligent development production credits requested pursuant to § 3485.3–2 of this title, the Federal portion of the LMU recoverable coal reserves will be increased by the amount of the production credits for determining LMU commercial quantities. If the LMU recoverable coal reserves determination is revised pursuant to § 3481.3(e) of this title, commercial quantities for diligent development will be revised, effective immediately.

§ 3485.3–2 LMU diligent development production credits.

(a) All production from anywhere within the LMU (Federal or non-Federal) that occurs after the effective date of LMU approval shall be credited toward diligent development until the LMU becomes subject to continued operation.

(b) Lease-specific production that occurred after a lease became subject to MLA diligence and prior to the effective date of LMU approval may be credited only toward LMU diligent development and only at the written request of the lessee.

(c) Previously approved production credits that were made for leases prior to the effective date of LMU approval will only be credited toward LMU diligent development and only at the written request of the lessee.

(d) For leases issued prior to August 4, 1976, that are not yet subject to MLA diligence on the effective date of LMU approval, all production that occurred between August 4, 1976, and the effective date of LMU approval may be credited only toward LMU diligent development and only at the written request of the lessee.

(e) Requests for diligent development production credits under §§ 3485.3–2 (b), (c), or (d) of this title shall be submitted to the authorized officer and shall contain a certified report of annual production that the lessee wishes to have credited toward LMU diligent development.

(f) Non-Federal coal production that occurred prior to the effective date of the LMU shall not be credited toward LMU diligent development.

(g) For LMU's subject to diligent development, any production that occurs during a *force majeure* suspension is credited toward diligent development, effective on the first day of the royalty reporting period following

termination or expiration of the suspension.

§ 3485.4 LMU continued operation.

§ 3485.4–1 LMU continued operation requirements.

(a) After LMU commercial quantities is produced for LMU diligent development, the LMU shall become subject to continued operation in 1 of 2 ways:

(1) After the production of coal in commercial quantities during the LMU diligent development period, by election during the LMU diligent development period. Such election may only be filed during the LMU diligent development period; or

(2) At the end of the LMU diligent development period.

(b) An LMU that is subject to continued operation shall maintain continued operation until the Federal, recoverable coal reserves are depleted or until the LMU ceases to exist, whichever occurs first.

(c) The condition of LMU continued operation may be satisfied either by annual production of LMU commercial quantities, by the payment of advance royalty as provided at § 3485.4–3 of this title, or by a combination of both.

(d) Any LMU for which the continued operation requirement is not maintained will be terminated by the authorized officer.

(e) For LMU's subject to continued operation, any production that occurs during a *force majeure* suspension is credited toward continued operation, effective on the first day of the royalty reporting period following termination or expiration of the suspension.

(f) The LMU recoverable coal reserves for the purpose of continued operation are those in existence when the LMU becomes subject to continued operation. If the LMU recoverable coal reserves determination is revised pursuant to § 3481.3(e) of this title, the commercial quantities for LMU continued operation will also be revised, effective at the beginning of the following LMU continued operation year. If an LMU is subject to continued operation, regardless of any increase in the LMU recoverable coal reserves, the LMU shall remain subject to continued operation.

(g) Once an LMU is subject to continued operation, by election or otherwise, that LMU shall not again be subject to diligent development.

§ 3485.4–2 LMU continued operation election.

(a) Election requests will not be accepted for an LMU that has not achieved LMU diligent development.

(b) The operator/lessee may elect to have the LMU become subject to continued operation upon written request to the authorized officer.

(c) When the election application is approved, the first LMU continued operation year shall begin on the first day of the calendar month following the filing of the election.

§ 3485.4–3 LMU advance royalty in lieu of continued operation.

(a) Advance royalty may only be accepted in lieu of LMU continued operation. Failure to maintain continued operation on an LMU, or pay advance royalty in lieu thereof, will subject the LMU to termination by the authorized officer.

(b) For advance royalty purposes, the value of the coal will be calculated in accordance with 30 CFR part 206. When LMU advance royalty is accepted in lieu of LMU continued operation, it shall be paid in accordance with § 3485.4–3(c) of this title on the production of commercial quantities of the Federal LMU recoverable coal reserves (see 30 CFR § 218.200 regarding payment of royalties).

(c) LMU advance royalty shall be determined using the following formula:

$$ARD = (COYR - COYP) \times (ARB/COYR) \times ARR \times UV$$

Where ARD = Advance Royalty Due
COYR = Continued Operation Year Production Requirement (i.e., commercial quantities of total LMU recoverable coal reserves (Federal and non-Federal))
COYP = Total LMU Production Achieved (Federal and non-Federal) During the Continued Operation Year
ARB = Advance Royalty Base (i.e., commercial quantities of Federal recoverable coal reserves in the LMU)
ARR = Advance Royalty Rate for the LMU (see §§ 3485.4–3(c) (1), (2), and (3) of this title)
UV = Unit Value (determined in accordance with 30 CFR part 206)

(1) The LMU advance royalty rate shall be 12½ percent where the Federal LMU recoverable coal reserves will be mined by only surface operations.

(2) The LMU advance royalty rate shall be 8 percent where the Federal LMU recoverable coal reserves will be mined by only underground operations.

(3) The advance royalty rate shall be 12½ percent where the Federal LMU recoverable coal reserves will be mined by a combination of underground and other operations.

(4) If the term "(COYR – COYP)" is less than or equal to zero, the LMU continued operation requirement has been met through production and no LMU advance royalty is owed for that LMU continued operation year.

(5) If the term "(COYR – COYP)" is greater than zero and less then COYR, LMU advance royalty is owed on that Federal portion of the tonnage (ARB/COYR) required to supplement the production (COYP) in order to meet the LMU continued operation requirement.

(6) If the term "(COYR – COYP)" equals COYR, LMU advance royalty is owed on that Federal portion of the tonnage (COYR × ARB/COYR) required to supplement the production (COYP) in order to meet the LMU continued operation requirement.

(d) For nonproducing LMUs, the operator/lessee may request to pay advance royalty at any time during the continued operation year. If the advance royalty is paid not later than 30 days after the beginning of the continued operation year for which it is due, no late payment charge will be required. For any LMU that fails to meet continued operation and for which advance royalty has not been paid during a continued operation year, advance royalty shall be paid not later than 30 days after the end of that continued operation year. Advance royalty that is paid late shall be subject to a late payment charge calculated in accordance with 30 CFR 218.200. Failure of the operator/lessee to comply with the provisions of 30 CFR 218.200 shall subject the LMU to cancellation.

(e) Advance royalty paid in lieu of production in commercial quantities for an LMU may be used to offset the Federal royalty owed on future LMU production. However, the LMU advance royalty balance may not be recouped below zero. Late payment charges shall not be used to offset future production royalty or advance royalty.

(f) No advance royalty is due when less than commercial quantities of Federal recoverable coal reserves remain on an LMU.

(g) Limitations on crediting LMU advance royalty toward production royalty:

(1) The aggregate number of years that LMU advance royalty may be paid in lieu of LMU continued operation shall not exceed 10, beginning with the date the LMU becomes subject to continued operation and every 10-year period thereafter. If an operator/lessee meets the requirement for continued operation in any continued operation year in which the operator/lessee has paid advance royalty, such year will not be considered when calculating the maximum number of years for which advance royalty may be accepted; and

(2) No LMU advance royalty paid during any 10-year period of an LMU shall be used to reduce a production

royalty pursuant to § 3485.4–3(e) of this title after the end of the 10-year period in which the LMU advance royalty is paid.

Subpart 3486—Inspection, Production Verification, Orders, and Enforcement

§ 3486.1 Inspections.

(a) The authorized officer will inspect, at least quarterly, leased or licensed Federal and Indian lands, and LMU's, where operations for exploration, development, production, beneficiation, or handling of coal are being conducted. Inactive leased or licensed Federal or Indian lands, and LMU's, will be examined annually, or more frequently if necessary.

(b) The operator/lessee shall provide to the authorized officer open access to the lease or license for inspection or investigation of exploration or mining operations in order to determine whether the operations are in compliance with all established requirements. For LMU's, such access shall be provided for Federal, Indian, and non-Federal lands. Such access shall also be provided for any facility located on non-Federal and/or off-lease lands where such lands are being used for such purposes as stockpiles, loadout facilities, and weighing scales.

(c) Upon receipt of a notice of proposed abandonment of mining operations in accordance with § 3483.6 of this title, or upon relinquishment, cancellation, termination, or expiration of a lease, license, or LMU in accordance with subpart 3475 of this title, or, upon receipt of a notice of proposed abandonment of exploration operations conducted on a lease, exploration license, license for incidental exploration, or LMU in accordance with subpart 3482 of this title, the authorized officer will conduct an inspection to determine whether the applicable exploration, development, production, resource recovery and protection, and abandonment requirements of the Federal lease, license, or LMU have been met.

(d) The surface management agency, if other than the Bureau of Land Management, and the regulatory authority will be notified by the authorized officer of any coal trespass and the planned enforcement actions to be taken by the authorized officer. For any trespass on any Federal lands that involves removal of unleased Federal coal, the authorized officer will determine the quantity and quality of coal removed, and determine the amount of trespass damages. Determinations of exploration or mining trespass and resulting enforcement actions taken will be in accordance with the provisions of § 9239.5–3 of this title.

§ 3486.2 Production verification.

(a) For producing leases, licenses, and LMU's on Federal and Indian lands, the authorized officer will substantiate and independently calculate production at least quarterly in concert with inspections pursuant to § 3486.1 of this title.

(b) For leases and LMU's, operators/lessees shall maintain current and accurate records that show the type, quality, and weight of all coal mined, sold, used on the premises, or otherwise disposed of, and all coal in storage (remaining in inventory).

(c) Licensees shall maintain a current record of all coal mined and/or removed.

(d) The operator/lessee shall provide to the authorized officer open access to the lease or license for inspection or investigation of any data necessary for independent verification of the accuracy of production reported for royalty purposes. For LMU's, such access shall be provided for Federal, Indian, and non-Federal lands. For purposes of production verification, the authorized officer may request copies of any data generated by the operator/lessee that are not submitted to the Minerals Management Service.

(e) The operator/lessee shall submit production maps quarterly, or more frequently if deemed necessary by the authorized officer. The maps shall show all excavations in each coal bed in such a manner that production for any royalty reporting period can be accurately determined. For LMU's, production maps for non-Federal production shall also be submitted quarterly and shall show all excavations in each coal bed in such a manner that non-Federal LMU production for any quarter can be accurately determined. Submission of production maps shall be in addition to the requirements of § 3483.4 of this title, but the production maps may be copies of or derived from such mining operations maps as long as the scale of the production map is adequate to determine production.

§ 3486.3 Orders.

(a) General Mining Orders, as defined at § 3400.0–5 of this title, may be issued by the BLM Director. All General Mining Orders will be published in the **Federal Register** both for public comment and in final form. General Mining Orders are binding on operators/lessees and apply to all leases that have been, or may thereafter be, issued as of the date specified in the **Federal Register.**

(b) Other orders may be issued by the authorized officer when it is necessary to address situations not covered by the established requirements. Any oral orders, approvals or consents will be confirmed in writing and documented in the lease file.

(c) The operator/lessee shall be construed to have received all orders that are mailed by certified mail, return receipt requested, to the mine office, or handed to a responsible official connected with the mine or exploration site for transmittal to the operator/lessee and/or his local representative.

§ 3486.4 Enforcement.

(a) If an operator/lessee knowingly records or reports less than the true weight or value of coal mined, the authorized officer will impose a penalty equal to either double the amount of Federal royalty due on the shortage or the full value of the shortage, as that value is determined in accordance with 30 CFR part 206. If an operator/lessee or licensee then continues to maintain false records or file false reports, the authorized officer will initiate lease-cancellation proceedings pursuant to § 3475.3–1 or § 3475.3–2 of this title.

(b) If the authorized officer determines that an operator/lessee has failed to comply with the established requirements, and such noncompliance does not threaten immediate and serious damage to the mine, the deposit being mined, valuable ore-bearing mineral deposits, or other resources, the authorized officer will serve a notice of noncompliance upon the operator/lessee by delivery in person to him or his agent, or by certified mail, return receipt requested, addressed to the operator/lessee at his last known address. Failure of the operator/lessee to take action in accordance with the notice of noncompliance within the time limits specified by the authorized officer shall be grounds for the authorized officer to issue an immediate cessation order. The authorized officer may also initiate action for forfeiture of any bonds and cancellation of the lease or license.

(c) The notice of noncompliance will specify in what respect(s) the operator/lessee has failed to comply with the established requirements and will specify the action that shall be taken to correct such noncompliance and the time limits within which such action shall be taken.

(d) Any notice of noncompliance issued for avoidably lost or wasted coal will include a determination of the tonnage lost or wasted and will be reported to the Minerals Management

Service for collection of royalty in accordance with 30 CFR part 206.

(e) If, in the judgment of the authorized officer, an operator/lessee is conducting activities that fail to comply with the established requirements, and/or that threaten immediate and serious damage to the mine, the deposit being mined, valuable ore-bearing mineral deposits, or, regarding exploration, the environment, the authorized officer will issue an immediate cessation order for such activities without prior notice of noncompliance.

(f) A written report shall be submitted by the operator/lessee to the authorized officer when such noncompliance has been corrected. Upon concurrence by the authorized officer that the conditions that warranted the issuance of a notice of noncompliance or the immediate cessation order have been corrected, the authorized officer will so notify the operator/lessee in writing.

(g) The authorized officer will enforce the requirements of SMCRA as codified at 30 CFR chapter VII only if a violation, condition, or practice is found and determined to be an emergency situation for which an authorized representative of the Secretary is required to act pursuant to 30 CFR part 843. Such determinations and enforcement actions regarding SMCRA will be in accordance with the following:

(i) Upon discovery of activities or conditions that do not pose a serious and imminent danger to the public or to resources or environmental quality, the authorized officer will refer the matter to the Surface Mining Officer for remedial action.

(ii) Upon discovery of activities or conditions that pose a serious and imminent danger to the health and safety of the public or to resources or environmental quality, the authorized officer will issue an immediate cessation order for such activities or conditions, without prior notice of noncompliance, and will immediately inform the Surface Mining Officer of the issuance of any such immediate cessation order.

(h) Failure of a lessee or a licensee to comply with an immediate cessation order or notice of noncompliance issued under this subpart, or with a written notice of noncompliance issued by the Surface Mining Officer in accordance with 30 CFR chapter VII, subchapter D, may be grounds for cancellation of the lease or license to mine.

GROUP 3400—[AMENDED]

26. In the list below, for each section listed in the left column, remove the cross-reference listed in the middle column from wherever it appears in the section, and add the cross-reference listed in the right column:

Section	Remove	Add
3400.3-3	3461.1	3451.1.
3420.1-3(b)(1)(ii).	3472	3462.
3420.1-4(e)(2)	3461	3451.
3420.1-4(e)(4)(i).	paragraphs (gg)(1) and (2) of § 3400.0-5.	"qualified surface owner," as defined at § 3400.0-5.
3420.1-7	3461.4-1	3451.4-1.
3422.2(c)(4)	3472.2-2	3462.2-2.
3422.3-2(c)	3472.2-2	3462.2-2.
3422.3-3	3471.1-2	3461.1-2.
3422.4(b)	3472.2-4	3462.2-4.
3425.1-2	3471	3461.
3425.1-2	3473.2	3471.2
3425.1-3	3472	3462.
3425.3(b)	3461.1(a)	3451.1(a).
3425.5	3470	3460.
3427.1	3400.0-5(kk)	3400.0-5.
3427.1	3400.0-5(gg)	3400.0-5.
3427.2(d)(2)	3400.0-5(gg)	3400.0-5.
3427.2(k)	3000.4	3400.12.
3427.5	3400.0-5(gg)	3400.0-5.
3430.3-2(c)(2)(iii)(A).	3461	3451.
3430.4-1(b)(2)	3461	3451.
3430.5-4(b)(2)	3461	3451.
3430.6-1	3470	3460.
3430.6-2	3474	3473.
3430.6-3	3483.1	3400.0-5.
3430.6-3	3451	3476.
3432.3(a)	3473.3-2	3472.2-1.
3440.1-1(b)	3473	3472.
3440.1-2(a)	3472.2-5(b)	3462.2-5(b).
9239.5-3(l)	Subpart 3507	Part 3410.

25. In the list below, the left column contains sections as redesignated in this document. For each redesignated section listed in the left column, remove the cross-reference listed in the middle column from wherever it appears in the redesignated section, and add the cross-reference listed in the right column:

Redesignated section	Remove	Add
3451.0-7	3461.1	3451.1.
3451.0-7	3400.0-5(mm)	3400.0-5.
3451.5(s)(1)	3400.0-5(a)	3400.0-5.
3451.2-1(b)(2)	3461.1	3451.1.
3451.2-2(b)	3461.1	3451.1.
3461.1-2(b)	3471.1-1(d)(2)	3461.1-1(d)(2).
3461.2-2(b)	3461.1(b)	3451.1(b).
3461.3	3472.1-2(g)	3462.1-2(g).
3462.1-2(a)	3472.1-3	3462.1-3.
3462.1-2(e)(1)(i)	Part 3480	Subparts 3478 and 3484.
3462.1-2(e)(1)(ii)	Subpart 3453	Subpart 3474.
3462.1-2(e)(1)(iii)	Subpart 3453	Subpart 3474.
3462.1-2(e)(2)(i)(A)	3400.0-5(rr)	3400.0-5.
3462.1-2(e)(2)(i)(B)	3400.0-5(rr)	3400.0-5.
3462.1-2(e)(2)(ii)	Subpart 3453	Subpart 3474.
3462.1-2(e)(2)(ii)	3452.2-2	3475.3-2.
3462.1-2(e)(4)(i)	Subpart 3453	Subpart 3474.
3462.1-2(e)(4)(iv)(A).	Subpart 3453	Subpart 3474.
3462.1-2(e)(4)(iv)(A).	Subpart 3452	Subpart 3475.
3462.1-2(e)(4)(iv)(A)(*2*).	Subpart 3453	Subpart 3474.
3462.1-2(e)(4)(iv)(B).	Subpart 3453	Subpart 3474.
3462.1-2(e)(4)(iv)(B)(*2*).	Subpart 3452	Subpart 3475.
3462.1-2(e)(4)(iv)(C)(*2*).	Subpart 3452	Subpart 3475.
3462.1-2(e)(6)(ii)(D)	Part 3480	Subpart 3484.
3462.1-2(e)(6)(ii)(E)	3487.1 (e) and (f).	3477.2-4.
3462.2-2(f)	3472.1-3	3462.1-3.

Dated: October 26, 1991.

Editorial Note: This document was received at the Office of the Federal Register June 27, 1991.

James M. Hughes,

Acting Assistant Secretary of the Interior.

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Friday
July 12, 1991

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 772

Requirements for Coal Exploration; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 772

RIN 1029-AB32

Requirements for Coal Exploration

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) is proposing to amend its rules pertaining to coal exploration operations. The rules would be amended to provide that exploration permits would not be issued to applicants with unresolved violations of the Surface Mining Control and Reclamation Act (SMCRA) and other applicable laws incurred in connection with surface coal mining operations owned or controlled by the applicant or anyone who owns or controls the applicant, or where there is a history of violations of SMCRA indicating an intent not to comply with the Act's provisions. The rule would also require for exploration permits which provide for the commercial use or sale of coal for testing, a performance bond and the payment of Abandoned Mine Land Reclamation Fund fees.

DATES:

Written Comments: OSM will accept written comments on the proposed rule until 5 p.m. Eastern time on September 10, 1991.

Public Hearings: Upon request, OSM will hold a public hearing on the proposed rule in Washington, DC on September 3, 1991, beginning at 9:30 a.m. Eastern time. Upon request, OSM will also hold hearings in other locations at times and on dates to be announced prior to the hearings.

OSM will accept requests for a public hearing until 4 p.m. Eastern time on August 12, 1991. Individuals wishing to attend, but not testify at the hearing should contact the person identified under "**FOR FURTHER INFORMATION CONTACT**" beforehand to verify that the hearing will be held.

ADDRESSES:

Written Comments: Hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 5131, 1100 L Street, NW., Washington, DC, or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 5131-L, 1951 Constitution Ave., NW., Washington, DC 20240.

Public Hearing: If held, the public hearing will be at the Department of the Interior Auditorium, 18th and C Streets NW., Washington, DC. The addresses for any hearings requested to be scheduled at other locations will be announced prior to the hearings.

Request for Public Hearing: Submit requests orally or in writing to the person and address specified under "**FOR FURTHER INFORMATION CONTACT.**"

FOR FURTHER INFORMATION CONTACT: Dr. Fred Block, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Ave., NW., Washington, DC 20240; Telephone: 202-208-2564 or 268-2564 (FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit three copies of their comments (see "**ADDRESSES**"). Comments received after the close of the comment period (see "**DATES**") or delivered to addresses other than those listed above, may not necessarily be considered or included in the Administrative Record for the final rule.

Public Hearings

OSM will hold public hearings on the proposed rule on request only. The time, date and address for the hearing to be held in Washington, DC has been specified previously in this notice (see "**DATES**" and "**ADDRESSES**"). The times, dates and addresses for other hearings that may be requested at other locations have not yet been scheduled, but will be announced in the **Federal Register** at least seven days prior to any such hearings.

Any person interested in participating at a hearing should inform Dr. Block (see "**FOR FURTHER INFORMATION CONTACT**") either orally or in writing by 4:00 p.m. Eastern time August 12, 1991. If no one has contacted Dr. Block to express an interest in participating in a hearing, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. The hearing will be transcribed. To assist the transcriber and to ensure an accurate record, OSM requests that persons who testify at a hearing give the transcriber a copy of their testimony. To assist OSM in preparing appropriate questions, OSM also requests that persons who plan to testify submit to OSM at the address previously specified for the submission of written comments (see "**ADDRESSES**"), an advance copy of their testimony.

Persons interested in attending the hearing, but not testifying, should contact the individual listed under "**FOR FURTHER INFORMATION CONTACT**" prior to the scheduled hearing date to verify that the hearing will be held.

II. Background

General Requirements for Exploration

The Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.*, requires that each State or Federal program ensure that coal exploration operations that substantially disturb the natural land surface are conducted in accordance with exploration rules issued by the regulatory authority. In addition to the general requirement to file a notice of intent to conduct coal exploration, the removal of more than 250 tons of coal during exploration requires the specific written approval of the regulatory authority.

OSM first promulgated rules establishing general requirements for coal exploration at 30 CFR part 776, and permanent program performance standards for coal exploration at 30 CFR part 815, on March 13, 1979 (44 FR 15311). These 1979 exploration rules were revised on September 8, 1983 (48 FR 40622), and part 776 was redesignated as part 772. Challenges to these 1983 regulations resulted in a court ruling on July 25, 1985, *In Re: Permanent Surface Mining Regulation Litigation II*, No. 79-1144, (D.D.C. July 15, 1985) (*In Re: Permanent (II)*). A suspension notice was issued by OSM on November 20, 1986.

On December 29, 1988 (53 FR 52942), OSM published revised exploration regulations that responded to the 1985 court decision. OSM also expanded the requirements for coal testing by requiring specific additional information for approval of such testing. A challenge to the December, 1988 rules resulted in a court decision, *In Re: Permanent Surface Mining Regulation Litigation, NWF III (ROUND IV). Civil Action No. 89-0504 (D.D.C. September 5. 1990)*, which upheld the regulations concerning coal testing under exploration permits

and narrative or map requirements for notices of intent to explore.

III. Discussion of Proposed Rule

OSM has reviewed the Surface Mining Control and Reclamation Act (SMCRA), its legislative history and implementing regulations, and as authorized under sections 201(c)(2) and 512(a) of SMCRA, is proposing to revise the coal exploration regulations at 30 CFR part 772 to better regulate coal exploration operations under SMCRA. The 30 CFR part 772 regulations establish the requirements and procedures applicable to coal exploration operations on all lands except for lands containing Federal coal, which are subject to the requirements of 43 CFR group 3400, and are administered by the Bureau of Land Management.

Section 772.12 Permit Requirements for Exploration Removing More Than 250 Tons of Coal, or Occurring on Lands Designated as Unsuitable for Surface Coal Mining Operations

OSM is proposing to revise the scope of the review of an application for an exploration permit. The proposed rule would require the applicant to submit information on violations incurred in connection with surface coal mining operations and would provide for their review by the regulatory authority. No exploration permit would be issued if the regulatory authority's review revealed that there were outstanding violations of surface coal mining operations owned or controlled by the applicant or anyone who owns or controls the applicant. The purpose of this proposal is to prevent exploration permits from being issued to persons who, either by themselves or through related entities, own or control or are owned or controlled by operators of surface coal mining operations currently in violation of SMCRA or other applicable laws.

In the past, some operators evaded the requirements of SMCRA and obtained new surface coal mining operations permits while past violations remained unabated or fees or fines remained unpaid. In some instances new corporations, partnerships or other business entities were formed, and through them permits for new operations were applied for, even though violations or payment of fees and penalties resulting from old operations were not corrected. Under the current rules, issuance of a permit to conduct surface coal mining operations is denied to such violators. However, these permit-blocked operators could apply for and obtain permits to conduct exploration operations while still having unabated violations for surface coal mining operations. OSM believes that it is inconsistent to deny mining permits to such persons, but to grant such persons exploration permits. Coal exploration involves activities that are preliminary to mining coal under a SMCRA permit, such as field gathering of coal resource data or environmental data to establish the conditions of an area. In addition, the regulatory authority may approve limited-scale extraction and commercial use or sale of coal for testing purposes under an exploration permit. However, to allow commercial use or sale of coal extracted under an exploration permit even though there could be no subsequent full-scale mining under a SMCRA permit, because the operator is permit-blocked, seems contrary to the intent of SMCRA.

Therefore, OSM is proposing to revise its rules concerning exploration permit requirements under the OSM permanent program to make them consistent with the compliance information requirements of 30 CFR 778.13 and 778.14, and the compliance review requirements of 30 CFR 773.15(b). As a result, coal exploration permit applicants would be made subject to the same compliance review standards that an applicant for a surface coal mining permit must meet. In its review of the compliance record of applicants for exploration permits, the regulatory authority would use the existing Applicant Violator System (AVS) in determining whether the applicant has any outstanding violations before issuing an exploration permit. As coal exploration permits would no longer be issued to persons who either own or control or are owned or controlled by persons whose surface coal mining operations have unresolved violations, OSM would gain an effective tool to reduce greatly the possibility that an operator who would otherwise be prohibited from opening a new mining operation under SMCRA would be able to obtain an exploration permit.

Proposed § 772.12(b)(2)(ii) would require an applicant for a coal exploration permit to provide the information required by 30 CFR 778.13(a), (b), (c)(1) through (c)(4), (d), (i) and (j). This information includes a list of all persons who own or control the applicant or who are owned or controlled by the applicant under the definition of "owned or controlled" and "owns or controls" in 30 CFR 773.5, the ownership or control relationship of each such person to the applicant, and a list of all coal mining operations owned or controlled by the applicant or anyone who owns or controls the applicant. For a complete discussion of the concepts of ownership and control and how they relate to the regulatory authority's compliance review procedures, see 53 FR 38868 (October 3, 1988).

Proposed § 772.12(b)(2)(ii) would also require the applicant to provide the violation information required by 30 CFR 778.14, which includes: a statement of whether the applicant or any operation owned or controlled by or under common control with the applicant has had a coal mining permit suspended or revoked, within 5 years of the date of submission of the exploration permit application or has forfeited a performance bond, and an explanation of the facts involved; information on all notices of violations incurred in connection with any surface coal mining operation under SMCRA and other applicable laws and regulations received by the applicant within three years of the date of the application; and all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application for any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant.

Under proposed § 772.12(d)(4), decisions on applications for exploration, the regulatory authority would conduct a review of the compliance record of the exploration permit applicant and any person who either owns or controls or is owned or controlled by the applicant, for violations incurred in connection with any surface coal mining and reclamation operations permit in accordance with 30 CFR 773.15(b). The regulatory authority would not issue the exploration permit if the applicant or any person who owns or controls or is owned or controlled by the applicant has any current violations pursuant to 30 CFR 773.15(b). If there are any unresolved violations, the regulatory authority would issue the exploration permit only after proof is submitted that they have been corrected, are in the process of being corrected or are under administrative or judicial appeal. This rule would also provide that if the regulatory authority makes a finding that the applicant, anyone who owns or controls the applicant or the operator specified in the exploration permit application controls or has controlled surface coal mining operations with a willful pattern of violations indicating an intent not to comply with the Act, no permit would be issued.

Clarification of application procedure when approval of sale of coal for testing

is requested. Proposed paragraph § 772.12(b)(14) would be added to clarify the application process for an exploration operation which includes the commercial use or sale of coal for testing. In such cases, both the application information required under § 772.12(b) and the additional information required by § 772.14(b) is required. Although § 772.14(b) states that the person conducting the exploration for the sale of coal for testing shall file an application for such approval with the regulatory authority, it is not clear that the application information requirements of § 772.12(b) incorporate the additional requirements of § 772.14(b). Therefore, proposed § 772.12(b)(14) would provide that if coal extracted during exploration is to be commercially used or sold under § 772.14, the additional information required under § 772.14(b) must be included as part of the application information.

Section 772.14 Commercial Use or Sale

Under § 772.14, the commercial use or sale of more than 250 tons of coal removed under an exploration permit is prohibited unless the operator first either obtains a SMCRA permit to mine or the regulatory authority approves extraction for commercial use or sale under the exploration permit for coal testing purposes. During 1988 and 1989, 43 such exploration permits were approved in Alabama, Oklahoma and Montana, allowing coal extraction for testing purposes of a total of approximately 600,000 tons of coal. The current regulations do not require the holder of an exploration permit who extracts and sells or uses coal for testing purposes to pay abandoned mine land (AML) fees under 30 CFR part 870. The proposed rule would require payment of such fees by all operators of exploration operations who extract more than 250 tons of coal for commercial use or sale. These operators should be required to pay AML fees due to the large amount of coal being removed.

Authority exists under SMCRA for the assessment of such fees. Section 402(a) of SMCRA requires operators of "coal mining operations subject to the provisions of [SMCRA]" to pay reclamation fees for coal produced at such operations. The extraction of coal for commercial use or sale at an exploration operation is a coal mining operation subject to the provisions of section 512 of SMCRA. Thus, operators producing coal at such operations are subject to AML fees under section 402.

New Section 772.16 Bonding Requirements

OSM is proposing to require a SMCRA performance bond for exploration operations that intend to remove more than 250 tons of coal for commercial use or sale for testing. Under current regulations there is no requirement for the permittee to post a performance bond for an exploration permit to assure that funds are available to complete reclamation obligations.

The tonnages involved for exploration testing can be substantial. During 1988 and 1989, 43 exploration permits were approved nationwide allowing extraction of a total of approximately 600,000 tons of coal, including one coal exploration permit allowing sale of up to 250,000 tons of coal. Such exploration test burn operations have the potential for significant environmental damage if successful reclamation is not accomplished. Therefore, OSM is proposing that a performance bond be posted to assure that reclamation of these operations would be completed successfully.

The proposed performance bond requirements would be less inclusive than those for a SMCRA permit, reflecting the lesser magnitude and scope of an exploration operation compared to a surface coal mining and reclamation operation.

The introductory paragraph of proposed § 772.16 would establish the bonding requirements for coal exploration permits and would clarify that cross-references to bonding regulations for surface coal mining operations that are not consistent with the exploration bond requirements of this section would be disregarded. This paragraph would also clarify that regulations which are referenced by proposed § 772.16, but refer to "surface coal mining and reclamation" and "reclamation plan", would be construed to refer to "exploration operations" and "reclamation activities under the exploration permit", respectively.

Proposed § 772.16(a) would require the applicant to file, on a form prescribed and furnished by the regulatory authority, a bond for performance made payable to the regulatory authority and conditioned upon the faithful performance of all the requirements of the Act, the regulatory program, and the exploration permit. The permittee would be prohibited from initiating any exploration disturbance prior to acceptance by the regulatory authority of the required performance bond. The proposed rule would require a single performance bond of sufficient amount to assure completion of reclamation for the entire exploration permit area in the event that forfeiture would be required. The amount of the bond would be determined by the regulatory authority. There would be no provisions for incremental or phased bonding, since the nature and scope of an exploration operation would not lend itself to extensive use of incremental or phased progression of land disturbance. The proposed rule would also contain notification requirements in the event the permittee would lose bond coverage and procedures for replacing the bond.

Paragraph (b) would state that the regulatory authority would prescribe the form of the performance bond, and may allow for either a surety bond, a collateral bond, a self-bond or a combination of these methods. This paragraph would also provide that any person with an interest in collateral posted as a bond who desires notification of actions pursuant to the bond, shall request the notification in writing to the regulatory authority at the time collateral is offered.

Paragraph (c) would provide that the liability period for an exploration performance bond would extend until all required reclamation was accomplished.

The exploration performance bond release provisions of paragraph (d) would be similar to those for mining operations under SMCRA, although there would be no phased bond release procedure for exploration performance bonds, since the exploration activity would be of a much shorter duration than for mining activity. There would be a provision for immediate release of the exploration bond if the exploration permit holder had obtained a SMCRA permit covering the area of the exploration permit and had posted the required performance bond for the mining operation with the regulatory authority.

Paragraph (e) would provide that bond forfeiture procedures would be in accordance with existing requirements for bond forfeiture for mining operations at 30 CFR 800.50.

IV. Procedural Matters

Effect on State Programs

Following promulgation of the final rule, OSM will evaluate permanent State regulatory programs approved under section 503 of SMCRA to determine whether any changes in these programs will be necessary. If the Director determines that certain State program provisions should be amended in order to be made no less effective than the revised Federal rules, the individual

States will be notified in accordance with the provisions of 30 CFR 732.17.

Effect in Federal Program States

The rules under 30 CFR parts 772 apply, through cross-referencing, in those States with Federal programs. These include California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee and Washington. The Federal programs for these States appear at 30 CFR parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942 and 947, respectively. Comments are specifically solicited as to whether unique conditions exist in any of these states which should be reflected as changes to the national rules or as specific amendments to any or all of the Federal programs.

Federal Paperwork Reduction Act

The collections of information contained in §§ 772.11, 772.12 (except paragraphs (b)(2)(ii) and (b)(14)), 772.14, and 772.15 have been approved by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* and assigned clearance number 1029–0033. The collections of information contained in §§ 772.12(b)(2)(ii), 772.12(b) (l4), and 772.16 have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* In the latter case, the collection of the information will not be required until the Office of Management and Budget has approved the additional requirements. The information is being collected to implement the requirements of 30 U.S.C. 1201 *et seq.* and will be used by the regulatory authority to administer the conduct of exploration operations. Response is required to obtain a benefit in accordance with 30 U.S.C. 1201 *et seq.*

Public reporting burden for this information collection is estimated to average 7 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information to Information Collection Clearance Officer; Office of Surface Mining; Washington, DC 20240; and to the Office of Management and Budget; Paperwork Reduction Project (1029–0033); Washington, DC 20503.

Executive Order 12291 and Regulatory Flexibility Act

The U.S. Department of the Interior (DOI) has determined that this proposed rule is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and certifies that this document would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This determination is based on the number of coal exploration permits issued during 1988 and 1989 and the total tonnage of coal removed as a result of those operations. During 1988 and 1989, 43 exploration permits were approved nationwide allowing extraction of a total of approximately 600,000 tons of coal.

National Environmental Policy Act

OSM has prepared a draft environmental assessment (EA), and has made an interim finding that the proposed rule would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). It is anticipated that a finding of no significant impact (FONSI) will be approved for the final rule in accordance with OSM procedures under NEPA. The EA is on file in the OSM Administrative Record at the address specified previously (see "**ADDRESSES**"). An EA will be completed on the final rule and a finding will be made on the significance of any resulting impacts prior to promulgation of the final rule.

Author

The principal author of this proposed rule is Dr. Fred Block, Branch of Federal and Indian Programs, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202–208–2564 or 268–2564 (FTS).

List of Subjects in 30 CFR Part 772

Reporting and recordkeeping requirements, Surface mining, Underground mining.

Accordingly, it is proposed to amend 30 CFR part 772 as set forth below:

Dated: April 1, 1991.

David O'Neal,

Assistant Secretary, Land and Minerals Management.

PART 772—REQUIREMENTS FOR COAL EXPLORATION

1. The authority citation for part 772 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; 16 U.S.C. 407 *et seq.*; and Pub. L. 100–34.

2. Section 772.10 is revised to read as follows:

§ 772.10 Information collection.

The information collection requirements contained in 30 CFR 772.11, 772.12, 772.14, 772.15 and 772.16 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029–0033. The information is needed to implement section 512 of Pub. L. 95–87, and will be used by the regulatory authority to administer the conduct of exploration operations. Response is required to obtain a benefit in accordance with Public Law 95–87. Public reporting burden for this information is estimated to average 7 hours per respondent, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden including suggestions for reducing the burden to: Information Collection Clearance Officer, Office of Surface Mining Reclamation and Enforcement, Washington, DC 20240; and to the Office of Management and Budget, Paperwork Reduction Project 1029–0033, Washington, DC 20503.

3. Section 772.12 is amended by revising paragraph (b)(2) and by adding new paragraphs (b)(14) and (d)(4), to read as follows:

§ 772.12 Permit requirements for exploration removing more than 250 tons of coal, or occurring on lands designated as unsuitable for surface coal mining operations.

* * * * *

(b) *Application information.*

* * *

(2)(i) The name, address, and telephone number of the applicant's representative who will be present at, and responsible for, conducting the exploration activities, and

(ii) The information required under § 778.13 (a), (b), (c)(1) through (c)(4), (d), (i), and (j); and the information required under § 778.14.

* * *

(14) If coal extracted during exploration is to be commercially used or sold under § 772.14, the additional information required under § 772.14(b).

* * * * *

(d) *Decisions on applications for exploration.*

* * * * *

(4) Before issuing the permit, the regulatory authority shall conduct a review of violations incurred in connection with any surface coal mining and reclamation operation in accordance with § 773.15(b) and the

information provided under § 772.12(b)(2). No exploration permit shall be issued if the coal exploration applicant would be denied a surface coal mining and reclamation operations permit under the provisions of § 773.15(b).

* * *

4. Section 772.14 is amended by adding paragraph (c) to read as follows:

§ 772.14 Commercial use or sale.

* * * * *

(c) Payment of reclamation fees as prescribed in 30 CFR part 870 is required for all coal that is commercially used or sold under an exploration permit in accordance with this section.

5. Section 772.16 is added to read as follows:

§ 772.16 Bonding requirements.

(a) General. This section establishes the bonding requirements for coal exploration permits, notwithstanding cross-references in other parts of the bonding requirements of 30 CFR part 800 referenced by this section. Where the term "surface coal mining and reclamation" is encountered in the regulations referenced by § 772.16, the term shall be construed to mean "exploration operations." Where the term "reclamation plan" is encountered in the regulations referenced by § 772.16, the term shall be construed to mean "reclamation activities under the exploration permit."

(1) After an exploration permit for commercial use or sale of more than 250 tons of coal for testing has been approved, but before a permit is issued, the applicant shall file, on a form prescribed and furnished by the regulatory authority, a bond for performance for the entire permit area, made payable to the regulatory authority and conditioned upon the faithful performance of all the requirements of the Act, the regulatory program, and the exploration permit.

(2) The exploration permit holder shall not initiate any exploration disturbance prior to acceptance by the regulatory authority of the required performance bond.

(3) The exploration bond shall be a single performance bond covering the entire permit area. The amount of the bond required shall be determined by the regulatory authority and shall be sufficient to assure the completion of reclamation if the work has to be performed by the regulatory authority in the event of forfeiture.

(4)(i) The bond shall provide a mechanism for a bank or surety company to give prompt notice to the regulatory authority and the permittee of any action filed alleging the insolvency or bankruptcy of the surety company, the bank, or the permittee, or alleging any violations which would result in suspension or revocation of the surety or bank charter or license to do business.

(ii) Upon the incapacity of a bank or surety company by reason of bankruptcy, insolvency, or suspension or revocation of a charter or license, the exploration permit holder shall be deemed to be without bond coverage and shall promptly notify the regulatory authority. The regulatory authority, upon notification received through procedures of paragraph (4)(i) of this section or from the exploration permit holder, shall, in writing, notify the operator who is without bond coverage and specify a reasonable period, not to exceed 30 days, to replace bond coverage. If an adequate bond is not posted by the end of the period allowed, the operator shall cease coal exploration activities and shall immediately begin to conduct reclamation operations in accordance with 30 CFR part 815. Exploration operations shall not resume until the regulatory authority has determined that an acceptable bond has been posted.

(b) Form of the Performance Bond. (1) The regulatory authority shall prescribe the form of the performance bond. The regulatory authority may allow for:

(i) A surety bond, as defined at 30 CFR 800.5, and which meets the requirements of 30 CFR 800.20;

(ii) A collateral bond, as defined at 30 CFR 800.5, and which meets the requirements of 30 CFR 800.21;

(iii) A self-bond, as defined at 30 CFR 800.5, and which meets the requirements of 30 CFR 800.23; or

(iv) A combination of any of these bonding methods.

(2) Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing to the regulatory authority at the time collateral is offered.

(c) Period of Liability. Performance bond liability for exploration operations shall be for the duration of the exploration operation and until achievement of the reclamation requirements of the Act, the regulatory program, and the permit.

(d) Bond Release. The exploration permit holder may obtain bond release through one of the following procedures:

(1) The permit holder may file an application with the regulatory authority for the release of the performance bond upon achievement of the reclamation requirements of the Act, the regulatory program, and the permit. Applications may be filed only at times or during seasons authorized by the regulatory authority in order to properly evaluate the completed reclamation operations. The times or seasons appropriate for the evaluation of certain types of reclamation shall be established in the regulatory program or identified in the permit application and approved by the regulatory authority.

(i) When an application for bond release is filed with the regulatory authority, the regulatory authority shall notify the municipality in which the coal exploration operation is located by certified mail at least 30 days prior to the release of the bond.

(ii) Procedures for public notice and opportunity to comment on bond release applications shall be the same as the provisions given under § 772.12 (c).

(iii) The regulatory authority shall inspect and evaluate the reclamation of the exploration site in accordance with § 800.40(b)(1).

(iv) The regulatory authority may release the bond for the entire exploration permit area if the regulatory authority is satisfied that the required reclamation and the public notice and comment process described in § 772.12(c) has been accomplished.

(v) The public notice and hearing provisions of § 772.12(e) shall be followed by the regulatory authority to provide for notification of decisions on the release of the exploration bond.

(vi) If the regulatory authority disapproves the application for release of the bond, the regulatory authority shall notify, in writing, the exploration permit holder, the surety and any person with an interest in collateral which requested notification under § 772.16(b)(2), stating the reasons for disapproval and recommending corrective actions necessary to secure the release.

(2) If the exploration permit holder has obtained a surface coal mining operations permit which includes the area of the exploration permit, and has posted the required performance bond for the mining operation, the regulatory authority shall immediately release the exploration bond.

(e) The procedures for the forfeiture of exploration bonds shall be in accordance with 30 CFR 800.50.

[FR Doc. 91-15715 Filed 7-11-91; 8:45 am]
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federal register

Friday
July 12, 1991

Part IV

Department of the Treasury

Office of Foreign Assets Control

31 CFR Part 545

South African Transactions Regulations; Final Rule

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 545

South African Transactions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule, amendments.

SUMMARY: This final rule amends the South African Transactions Regulations, 31 CFR part 545 (the "Regulations"), to terminate the sanctions imposed in the Regulations against South Africa, effective July 10, 1991. The lifting of sanctions implements Executive Order 12769 of July 10, 1991, published elsewhere in this issue, in which the President determined that the Government of South Africa had taken all steps specified in section 311(a) of the Comprehensive Anti-Apartheid Act of 1986, 22 U.S.C. 5001–5117 (the "Act"), and therefore, that title 3 and sections 501(c) and 504(b) of the Act, 22 U.S.C. 5091(c) and 5094(b), had terminated. The termination of sanctions has no effect on the Treasury Department's enforcement authority with respect to acts committed prior to July 10, 1991.

EFFECTIVE DATE: 12:01 p.m. Eastern Daylight Time, July 10, 1991.

FOR FURTHER INFORMATION: Contact William B. Hoffman, Chief Counsel (tel.: 202/535–6020), or Steven I. Pinter, Chief of Licensing (tel.: 202/535–9449), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: On July 10, 1991, the President determined that the conditions specified in section 311(a) of the Act, 22 U.S.C. 5061(a), for lifting the sanctions imposed against South Africa in the Act had been satisfied. Pursuant to that determination, Executive Order 12769 terminated sanctions imposed by title 3 and sections 501(c) and 504(b) of the Act.

In implementation of Executive Order 12769, the Office of Foreign Assets Control is amending the Regulations to terminate, with respect to transactions on or after July 10, 1991, the prohibitions contained in subpart B. Subpart B of the Regulations implements certain trade and financial sanctions on South Africa contained in title 3 of the Act. This amendment terminates import prohibitions on the following goods: South African gold coins (Regulations, § 545.201); South African agricultural commodities, products, byproducts and derivatives, and articles suitable for human consumption (Regulations, § 545.205); iron ore extracted, and iron and steel produced in South Africa (Regulations § 545.206); South African sugars, syrups and molasses (Regulations, § 545.207); articles grown, produced, manufactured, marketed, or otherwise exported by a parastatal organization of South Africa (Regulations, § 545.208); and South African uranium ore, uranium oxide, coal, and textiles (Regulations, § 545.211).

This final rule also terminates the prohibitions in subpart B of the Regulations on loans to the South African Government and its controlled entities (Regulations, § 545.202); the acceptance, receipt or holding by U.S. depository institutions of non-diplomatic deposit accounts of the South African Government or its controlled entities (Regulations, § 545.209); and new investments in South Africa (Regulations, § 545.210).

This amendment does not affect enforcement authority with respect to transactions occurring prior to the effective date, or proceedings pending on the effective date, or rights or duties that matured or penalties that were incurred prior to the effective date. Nor does the amendment affect recordkeeping or reporting requirements with respect to transactions occurring prior to the effective date.

Because the Regulations involve a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

List of Subjects in 31 CFR Part 545

Agricultural commodities; Banking; Coal; Finance; Foreign currencies; Gold; Imports; Investments; Iron; Krugerrands; Penalties; Reporting and recordkeeping requirements; South Africa; Steel; Sugar; Textiles; Uranium.

For the reasons set forth in the preamble, 31 CFR part 545 is amended as follows:

PART 545—SOUTH AFRICAN TRANSACTIONS REGULATIONS

1. The "authority" citation for part 545 continues to read as follows:

Authority: 22 U.S.C. 5001–5116, E.O. 12571, 51 FR 39505, October 29, 1986.

Subpart E—Licenses; Authorizations; and Statements of Licensing Policy

2. Section 545.599 is added to read as follows:

§ 545.599 Lifting of sanctions.

(a) The prohibitions contained in §§ 545.201 through 545.211 of this part do not apply to any transaction occurring after 12:01 p.m. e.d.t., July 10, 1991.

(b) Nothing in this section affects any action taken or proceeding pending and not finally concluded or determined on, or any action or proceeding based on any act committed prior to, or any rights or duties that matured or penalties that were incurred prior to 12:01 p.m. e.d.t., July 10, 1991.

Dated: July 10, 1991.

Steven I. Pinter,

Acting Director, Office of Foreign Assets Control.

Approved: July 10, 1991.

Nancy L. Worthington,

Acting Assistant Secretary (Enforcement).

[FR Doc. 91–16829 Filed 7–11–91; 9:18 am]

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federal register

Friday
July 12, 1991

Part V

The President

Proclamation 6314—Lyme Disease Awareness Week, 1991

Legislation

Federal Register
Vol. 56, No. 134
Friday, July 12, 1991

Presidential Documents

Title 3—

The President

Proclamation 6314 of July 10, 1991

Lyme Disease Awareness Week, 1991

By the President of the United States of America

A Proclamation

Lyme disease is a potentially debilitating bacterial infection, transmitted to humans by the bite of a very small tick, that merits the attention of all Americans. These ticks—which frequently appear to be no larger than a freckle—feed primarily on deer, but other hosts may include horses, dogs, cats, birds, and cattle. Although most cases are concentrated in the coastal Northeast, Wisconsin, Minnesota, northern California, and Oregon, Lyme disease has been reported in nearly all States, and the number of recorded cases has been increasing each year.

Fortunately, however, most persons with Lyme disease respond well to prompt treatment with antibiotics if the infection is detected early. Early symptoms of the disease may include a red, bull's-eye-shaped rash at the site of a tick bite, headache, fever, joint pain, and fatigue. Later symptoms may mimic those of arthritis and/or brain, nerve, and heart disease. If left untreated, Lyme disease can seriously damage the skin, joints, heart, and nervous system.

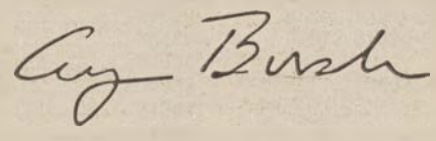
Because Lyme disease can pose a significant health threat, and because no completely reliable test for detection of the infection has been developed, prevention is very important. Hikers, outdoor workers, and other individuals who enter wooded, tick-infested areas should take precautions to avoid being bitten by the deer tick. These include staying away from long grass or brush, covering up well with light-colored slacks and long-sleeved shirts, using tick repellents, and carefully examining oneself afterwards for ticks.

In the Federal Government, physicians and scientists are working together with their colleagues and other concerned individuals in the private sector to advance research on Lyme disease and to promote public awareness of this complex and potentially dangerous infection.

In support of those efforts, the Congress, by House Joint Resolution 138, has designated the week beginning July 21, 1991, as "Lyme Disease Awareness Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week beginning July 21, 1991, as Lyme Disease Awareness Week. I encourage all Americans to observe this week with appropriate programs and activities to increase their knowledge of Lyme disease.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of July, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.



[FR Doc. 91-16859
Filed 7-11-91; 11:09 am]
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Vol. 56, No. 134

Friday, July 12, 1991

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–275–3030).

H.R. 749/Pub. L. 102–67

To authorize the Secretary of the Interior to accept a donation of land for addition to the Ocmulgee National Monument in the State of Georgia. (July 9, 1991; 105 Stat. 325; 1 page) Price: $1.00

H.J. Res. 72/Pub. L. 102–68

To designate December 7, 1991, as "National Pearl Harbor Remembrance Day". (July 9, 1991; 105 Stat. 326; 1 page) Price: $1.00

Public Laws

102d Congress, 1st Session, 1991

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 102d Congress, 1st Session, 1991.

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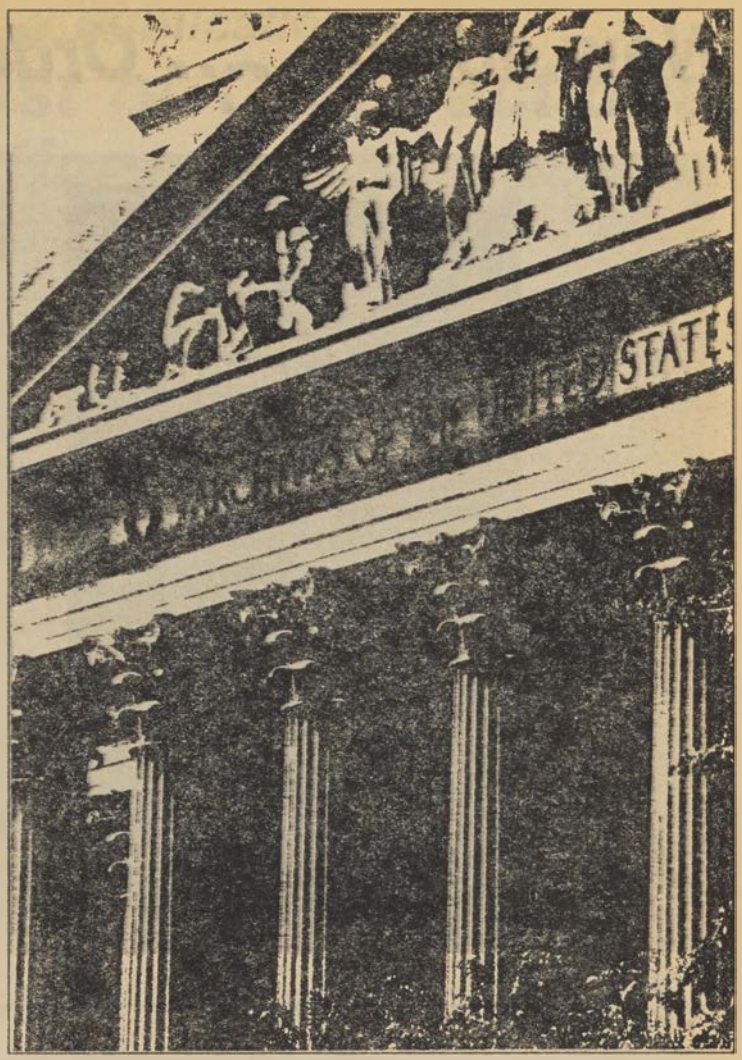

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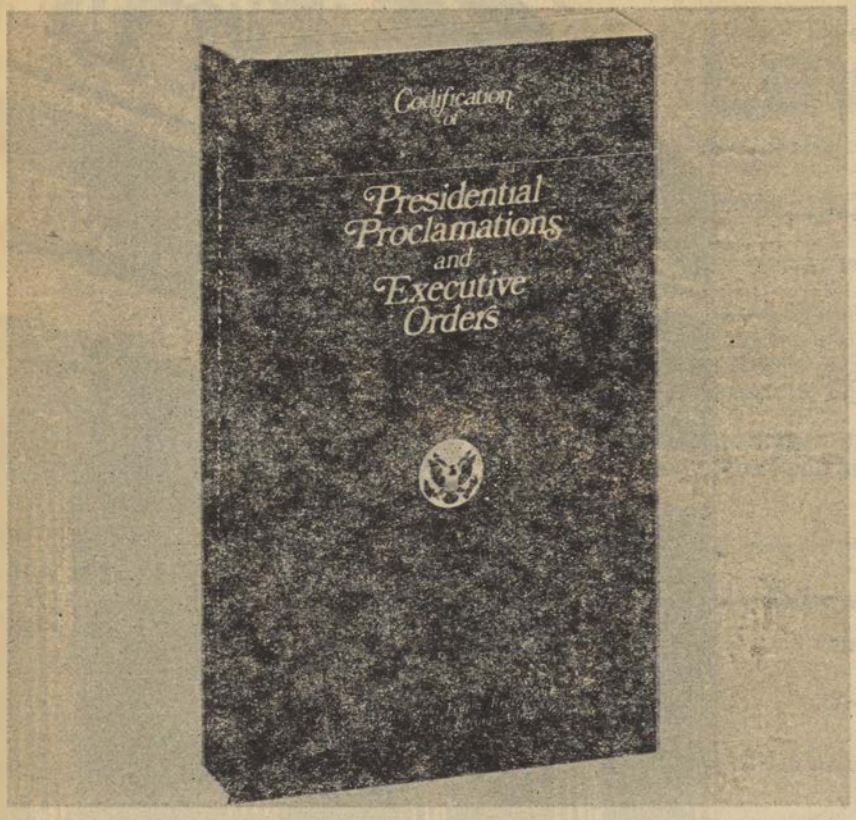

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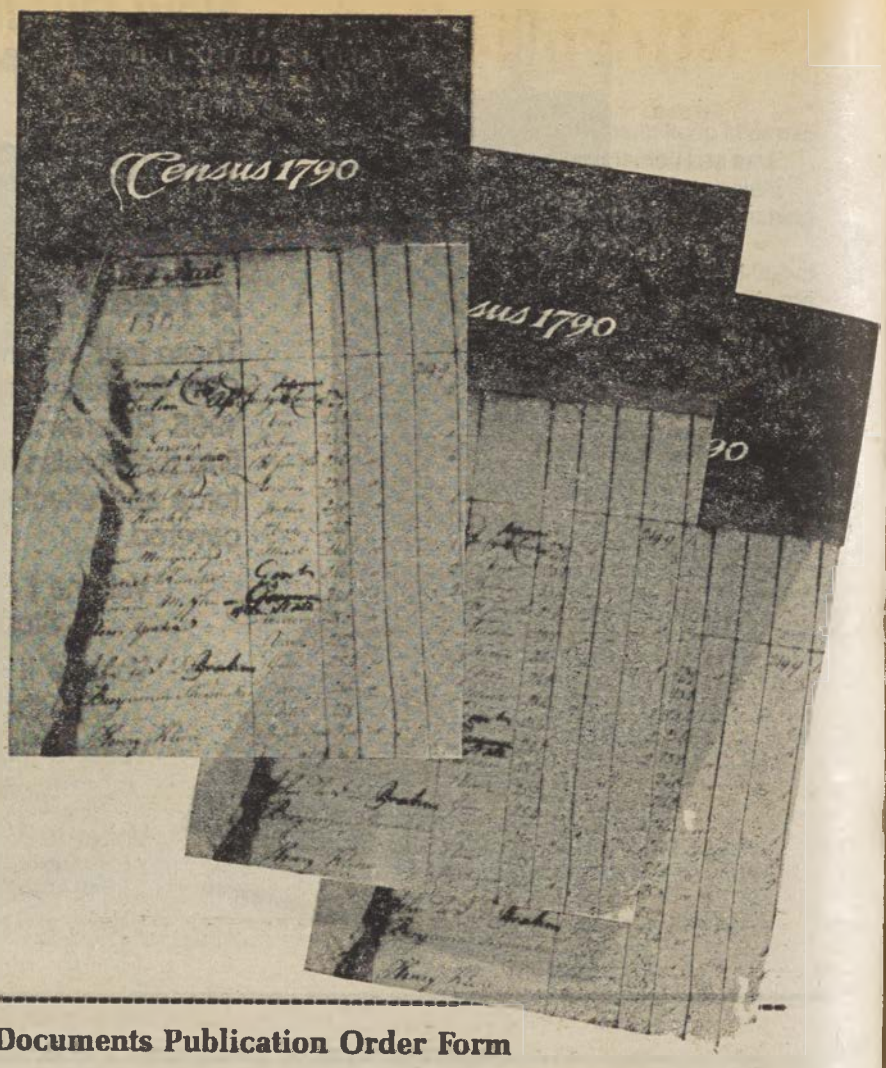

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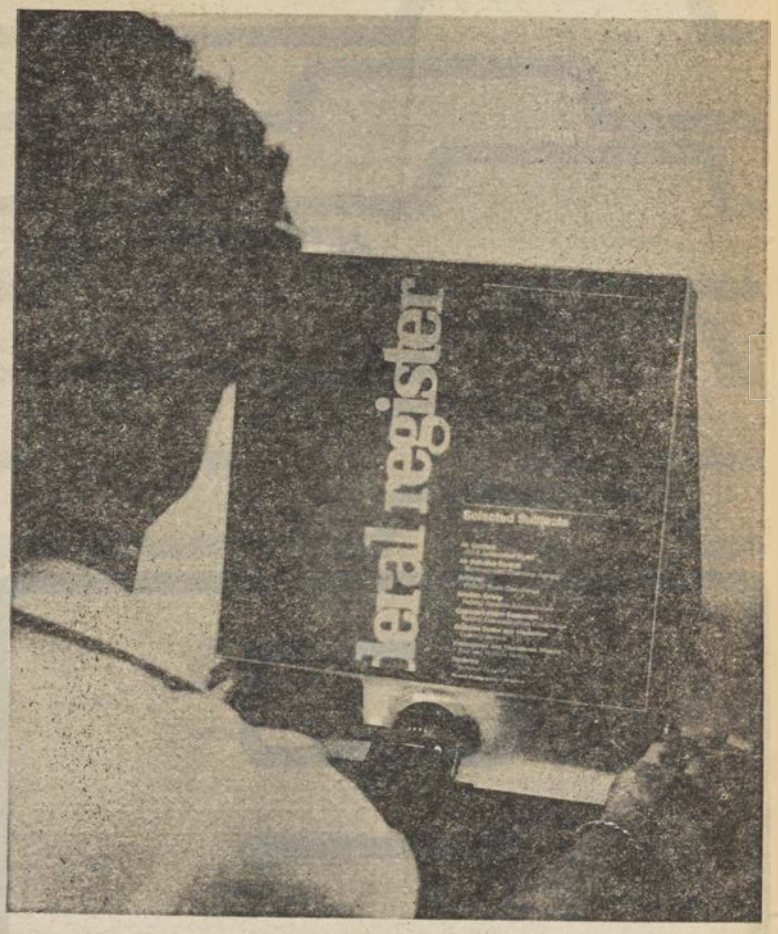

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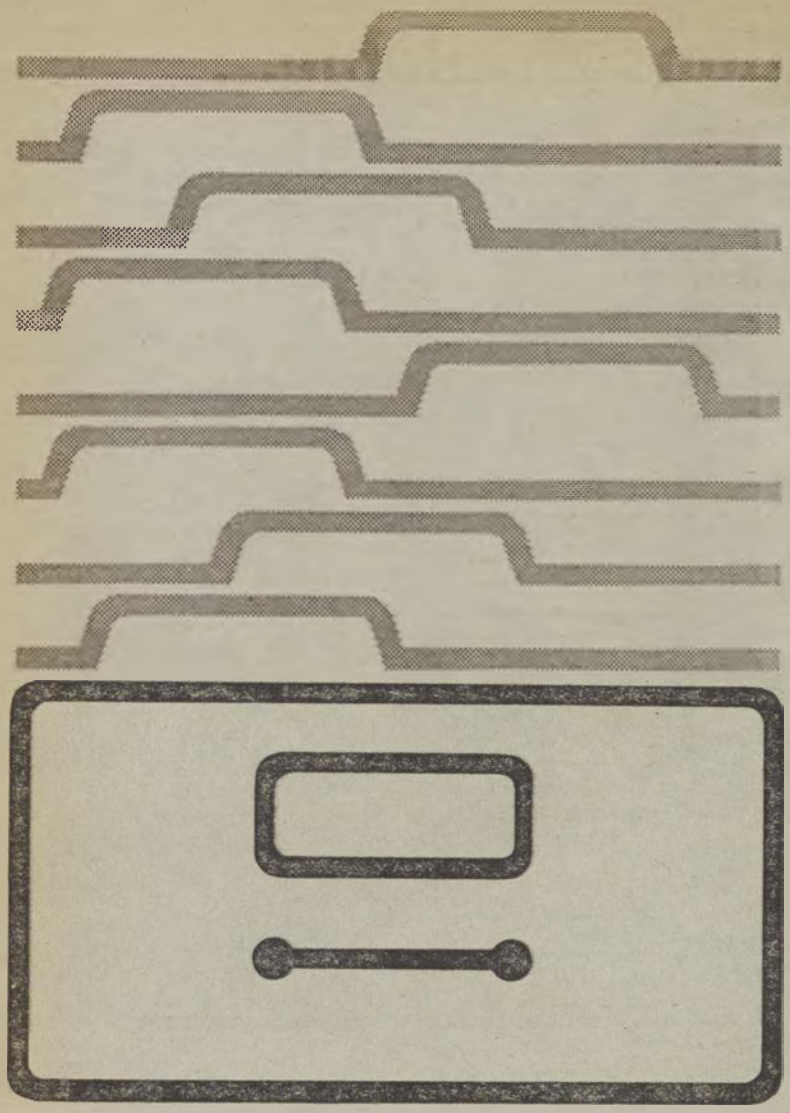

Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1989
SUPPLEMENT: Revised January 1, 1991

The GUIDE and the SUPPLEMENT should be used together. This useful reference tool, compiled from agency regulations, is designed to assist anyone with Federal recordkeeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

The GUIDE is formatted and numbered to parallel the CODE OF FEDERAL REGULATIONS (CFR) for uniformity of citation and easy reference to the source document.

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